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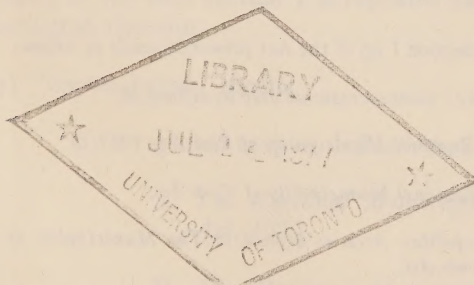
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1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

95

**An Act to amend
the Toronto Area Transit Operating
Authority Act, 1974**

THE HON. J. W. SNOW
Minister of Transportation and Communications



EXPLANATORY NOTES

SECTION 1.—Subsection 1. Section 1 (a) of the Act presently reads as follows:

1. *In this Act,*

(a) *“area of jurisdiction of the Authority” means the area composed of,*

(i) *the Regional Area as defined in The Regional Municipality of Peel Act, 1973,*

(ii) *the Regional Area as defined in The Regional Municipality of York Act, and*

(iii) *the Metropolitan Area as defined in The Municipality of Metropolitan Toronto Act;*

The amendment expands the meaning of “area of jurisdiction of the Authority”.

Subsection 2. Section 1 (g) of the Act presently reads as follows:

(g) *“regional area” means a regional area as defined in,*

(i) *The Regional Municipality of Peel Act, 1973, or*

(ii) *The Regional Municipality of York Act,*

or the Metropolitan Area as defined in The Municipality of Metropolitan Toronto Act.

The amendment expands the meaning of “regional area”.

BILL 44

1977

**An Act to amend
the Toronto Area Transit Operating
Authority Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *a* of section 1 of *The Toronto Area Transit Operating Authority Act, 1974*, being chapter 69, is amended by striking out “and” at the end of subclause ii and by adding thereto the following subclauses:
 - (iv) The Regional Area as defined in *The Regional Municipality of Durham Act, 1973*, ^{s. 1 (a), amended} 1973, c. 78
 - (v) The Regional Area as defined in *The Regional Municipality of Halton Act, 1973*, and ^{1973, c. 162}
 - (vi) The Regional Area as defined in *The Regional Municipality of Hamilton-Wentworth Act, 1973*. ^{1973, c. 74}
- (2) Clause *g* of the said section 1 is repealed and the following ^{s. 1 (g), re-enacted} substituted therefor:
 - (g) “regional area” means,
 - (i) a regional area as defined in,
 - A. *The Regional Municipality of Durham Act, 1973*, ^{1973, c. 78}
 - B. *The Regional Municipality of Halton Act, 1973*, ^{1973, c. 162}
 - C. *The Regional Municipality of Hamilton-Wentworth Act, 1973*, ^{1973, c. 74}
 - D. *The Regional Municipality of Peel Act, 1973*, ^{1973, c. 60}

R.S.O. 1970,
c. 408

E. *The Regional Municipality of York Act*,
or

R.S.O. 1970,
c. 295

(ii) the Metropolitan Area as defined in *The Municipality of Metropolitan Toronto Act*.

s. 1 (j),
amended

(3) Clause *j* of the said section 1 is amended by adding at the end thereof "and parcel express".

s. 2 (2),
amended

2.—(1) Subsection 2 of section 2 of the said Act is amended by striking out "four" in the first line and inserting in lieu thereof "seven".

s. 2 (2) (b),
amended

(2) Clause *b* of subsection 2 of the said section 2 is amended by inserting after "of" in the second line "Durham, Halton, Hamilton-Wentworth".

s. 2 (4),
amended

(3) Subsection 4 of the said section 2 is amended by striking out "Three" and inserting in lieu thereof "Four".

s. 3,
repealed

3. Section 3 of the said Act is repealed.

s. 6 (b),
amended

4.—(1) Clause *b* of section 6 of the said Act is amended by adding at the end thereof "and to operate, within the area of jurisdiction of the Authority on routes where the Authority operates an inter-regional transit service, transit services within a regional area at the request of and under an agreement with the council of the regional area or the council of an area municipality within the regional area".

s. 6,
amended

(2) The said section 6 is amended by adding thereto the following clause:

(aa) to provide a parcel express service within the area of jurisdiction of the Authority only in conjunction with and ancillary to its passenger service.

s. 7 (2) (d),
re-enacted

5. Clause *d* of subsection 2 of section 7 of the said Act is repealed and the following substituted therefor:

(d) enter into agreements with the Crown, any individual, corporation, partnership or association,

(i) for the leasing of transit vehicles owned by the Authority with drivers, or

(ii) for any purpose related to the objects or powers of the Authority; and

.

Subsection 3. Section 1 (j) of the Act presently reads as follows:

(j) "*transit system*" means a system for the transportation of passengers.

SECTION 2. Section 2 (2) of the Act presently reads as follows:

(2) *The Authority shall be composed of four members as follows,*

(a) *one member appointed by the Lieutenant Governor in Council, who shall be the chairman of the Authority;*

(b) *the chairmen of the regional councils of the regional municipalities of Peel and York; and*

(c) *the chairman of the Metropolitan Council of The Municipality of Metropolitan Toronto.*

Section 2 (4) of the Act presently reads as follows:

(4) *Three members of the Authority constitute a quorum.*

SECTION 3. Section 3 of the Act presently reads as follows:

3. *The chairmen of the regional councils of the regional municipalities of Halton and Hamilton-Wentworth shall receive notice and the agenda of all meetings of the Authority and may attend and participate in the discussion at any meeting of the Authority of any matter directly affecting the transportation of passengers between their respective regional municipalities and the area of jurisdiction of the Authority.*

In view of the amendment to section 2 (2) of the Act, this section is not necessary.

SECTION 4.—Subsection 1. Section 6 (b) of the Act presently reads as follows:

6. *The objects of the Authority are,*

(b) *to co-ordinate the operations of surface and subsurface inter-regional transit systems and surface and subsurface regional transit systems.*

Subsection 2. The new section 6 (aa) of the Act expands the objects of the Authority.

SECTION 5. Section 7 (2) (d) of the Act presently reads as follows:

7.—(2) *In carrying out its objects the Authority may,*

(d) *enter into agreements with the Crown, any individual, corporation, partnership or association for any purpose related to the objects or powers of the Authority; and*

The new section 7 (2) (d) permits the Authority to lease out transit vehicles with drivers.

SECTION 6. Self-explanatory.

6. The said Act is amended by adding thereto the following^{s. 11a, enacted} section:

11a. Where the Authority operates a transit service^{Fares established by agreement} within a regional area under agreement with the council of the regional area or with the council of an area municipality within the regional area, the tariff of fares of the service shall be established by the agreement.

7. This Act comes into force on the day it receives Royal Assent.^{Commence-ment}
8. The short title of this Act is *The Toronto Area Transit Operating Authority Amendment Act, 1977*.^{Short title}

BILL 44

An Act to amend
the Toronto Area Transit Operating
Authority Act, 1974

1st Reading

July 6th, 1977

2nd Reading

3rd Reading

THE HON. J. W. SNOW
Minister of Transportation and
Communications

(Government Bill)

BILL 44

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to amend
the Toronto Area Transit Operating
Authority Act, 1974**

THE HON. J. W. SNOW
Minister of Transportation and Communications



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 44

1977

**An Act to amend
the Toronto Area Transit Operating
Authority Act, 1974**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *a* of section 1 of *The Toronto Area Transit Operating Authority Act, 1974*, being chapter 69, is amended by striking out “and” at the end of subclause ii and by adding thereto the following subclauses:
- (iv) The Regional Area as defined in *The Regional Municipality of Durham Act, 1973*, ^{s. 1 (a), amended} 1973, c. 78
 - (v) The Regional Area as defined in *The Regional Municipality of Halton Act, 1973*, and ^{s. 162} 1973, c. 162
 - (vi) The Regional Area as defined in *The Regional Municipality of Hamilton-Wentworth Act, 1973*. ^{s. 74} 1973, c. 74
- (2) Clause *g* of the said section 1 is repealed and the following ^{s. 1 (g), re-enacted} substituted therefor:
- (g) “regional area” means,
- (i) a regional area as defined in,
 - A. *The Regional Municipality of Durham Act, 1973*, ^{s. 78} 1973, c. 78
 - B. *The Regional Municipality of Halton Act, 1973*, ^{s. 162} 1973, c. 162
 - C. *The Regional Municipality of Hamilton-Wentworth Act, 1973*, ^{s. 74} 1973, c. 74
 - D. *The Regional Municipality of Peel Act, 1973*, ^{s. 60} 1973, c. 60

R.S.O. 1970,
c. 408

E. *The Regional Municipality of York Act*,
or

R.S.O. 1970,
c. 295

(ii) the Metropolitan Area as defined in *The Municipality of Metropolitan Toronto Act*.

s. 1 (*j*),
amended

(3) Clause *j* of the said section 1 is amended by adding at the end thereof "and parcel express".

s. 2 (2),
amended

2.—(1) Subsection 2 of section 2 of the said Act is amended by striking out "four" in the first line and inserting in lieu thereof "seven".

s. 2 (2) (*b*),
amended

(2) Clause *b* of subsection 2 of the said section 2 is amended by inserting after "of" in the second line "Durham, Halton, Hamilton-Wentworth".

s. 2 (4),
amended

(3) Subsection 4 of the said section 2 is amended by striking out "Three" and inserting in lieu thereof "Four".

s. 3,
repealed

3. Section 3 of the said Act is repealed.

s. 6 (*b*),
amended

4.—(1) Clause *b* of section 6 of the said Act is amended by adding at the end thereof "and to operate, within the area of jurisdiction of the Authority on routes where the Authority operates an inter-regional transit service, transit services within a regional area at the request of and under an agreement with the council of the regional area or the council of an area municipality within the regional area".

s. 6,
amended

(2) The said section 6 is amended by adding thereto the following clause:

(*aa*) to provide a parcel express service within the area of jurisdiction of the Authority only in conjunction with and ancillary to its passenger service.

s. 7 (2) (*d*),
re-enacted

5. Clause *d* of subsection 2 of section 7 of the said Act is repealed and the following substituted therefor:

(*d*) enter into agreements with the Crown, any individual, corporation, partnership or association,

(i) for the leasing of transit vehicles owned by the Authority with drivers, or

(ii) for any purpose related to the objects or powers of the Authority; and

.

6. The said Act is amended by adding thereto the following ^{s. 11a,}
section: ^{enacted}

11a. Where the Authority operates a transit service ^{Fares}
within a regional area under agreement with the council of ^{established}
the regional area or with the council of an area municipality ^{by agreement}
within the regional area, the tariff of fares of the service shall
be established by the agreement.

7. This Act comes into force on the day it receives Royal Assent. ^{Commence-}
^{ment}
8. The short title of this Act is *The Toronto Area Transit* ^{Short title}
Operating Authority Amendment Act, 1977.

An Act to amend
the Toronto Area Transit Operating
Authority Act, 1974

1st Reading

July 6th, 1977

2nd Reading

October 25th, 1977

3rd Reading

October 25th, 1977

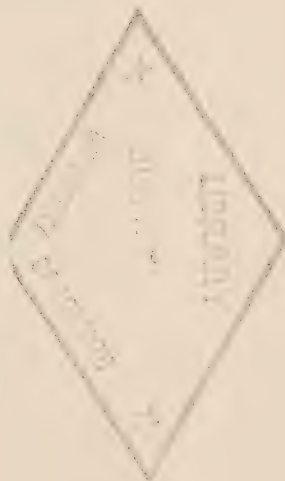
THE HON. J. W. SNOW
Minister of Transportation and
Communications

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to amend
The Farm Products Payments Act**

THE HON. W. NEWMAN
Minister of Agriculture and Food



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

The Farm Products Payments Act now applies to such animals, milk, cream or cheese or such classes thereof as are designated in the regulations.

The general purpose of the Bill is to extend the operation of the Act to a wider range of farm products and to provide for the establishment of funds in respect thereof.

SECTION 1. Clauses *c* and *f* of section 1 of the Act now read as follows:

(c) "*farm product*" means such animals, milk, cream or cheese or such classes thereof as are designated in the regulations;

.

(f) "*producer*" means a person who produces a farm product and includes such marketing boards under *The Milk Act* as are designated in the regulations.

The re-enacted clauses are complementary to the general purpose of the Bill.

SECTION 2. Subsection 4 of section 2 of the Act now reads as follows:

(4) *The Lieutenant Governor in Council may designate The Milk Commission of Ontario under subsection 1 as a board constituted for the purposes of this Act and, when so designated, The Milk Commission of Ontario shall be deemed for the purposes of this Act, other than subsections 5 and 6, to be a board constituted under subsection 1.*

The subsection is enlarged to provide that the Farm Products Marketing Board may be designated as a board for the purposes of the Act.

BILL 45

1977

An Act to amend The Farm Products Payments Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *c* and *f* of section 1 of *The Farm Products Payments Act*, being chapter 163 of the Revised Statutes of Ontario, 1970, are repealed and the following substituted therefor: s.1 (c, f).
re-enacted

(c) "farm product" means such animals, meats, eggs, poultry, wool, milk, cream, cheese, grains, seeds, fruit, vegetables, maple products, honey or tobacco or such classes or parts thereof as are designated in the regulations;

.

(f) "producer" means a person who produces a farm product and includes, where so designated in the regulations,

(i) a marketing board under *The Milk Act*, R.S.O. 1970,
c. 273

(ii) a local board under *The Farm Products Marketing Act*, and R.S.O. 1970,
c. 162

(iii) an operator engaged in the business of operating community sales under *The Live Stock Community Sales Act*. R.S.O. 1970,
c. 253

2. Subsection 4 of section 2 of the said Act is repealed and the following substituted therefor: s. 2 (4).
re-enacted

(4) The Lieutenant Governor in Council may designate under subsection 1 The Milk Commission of Ontario or The Farm Products Marketing Board as a board constituted for the purposes of this Act and, when so designated, the said Commission or Board shall be deemed for the purposes of Milk
Commission
and Farm
Products
Marketing
Board may
be a board

this Act, other than subsections 5 and 6 of this section, to be a board constituted under subsection 1.

s. 5 (3).
re-enacted

3. Subsection 3 of section 5 of the said Act is repealed and the following substituted therefor:

Advances
or loans
to board

(3) If, at any time, the amount standing to the credit of a fund is insufficient for the purpose of making payments for claims under this Act, the Lieutenant Governor in Council may authorize the Treasurer of Ontario,

(a) in the case of a fund that exists when this clause comes into force, to advance out of the Consolidated Revenue Fund to the board that administers the fund such sums as are necessary to meet the deficit; or

(b) in the case of any fund, to make out of the Consolidated Revenue Fund to the board that administers the fund loans that do not bear interest and do not exceed in the aggregate \$250,000,

on such terms and conditions as the Lieutenant Governor in Council directs.

Grant
to board

(3a) Where the Lieutenant Governor in Council establishes a fund under subsection 1 of section 2, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make out of the Consolidated Revenue Fund to the board that administers the fund one grant in an amount not exceeding \$25,000.

Payment
out of
fund

(3b) Every board that administers a fund shall pay out of the fund all moneys required for,

(a) the payment of claims under this Act; and

(b) the repayment of advances or loans, as the case may be, under subsection 3.

s. 7.
re-enacted

4. Section 7 of the said Act is repealed and the following substituted therefor:

Failure to
pay fees
or furnish
security

7. Failure,

(a) to pay a fee prescribed in the regulations; or

(b) to furnish security or proof of financial responsibility in accordance with the regulations,

SECTION 3. Subsection 3 of section 5 of the Act now reads as follows:

- (3) *If, at any time, the amount standing to the credit of a fund is insufficient for the purpose of making payments for claims under this Act, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to advance out of the Consolidated Revenue Fund to the board that administers the fund such sums as are necessary to meet the deficit on such terms and conditions as the Lieutenant Governor in Council directs.*

The subsection is enlarged to authorize the making of loans to a board that administers a fund.

The new subsection 3a authorizes the Treasurer of Ontario, with the approval of the Lieutenant Governor in Council, to make one grant in an amount not exceeding \$25,000 to a board.

The new subsection 3b sets out the moneys that are payable out of a fund.

SECTION 4. Section 7 of the Act now reads as follows:

7. *Failure to pay a fee prescribed in the regulations shall be grounds for the suspension or revocation of or refusal to issue or renew any licence under The Milk Act.*

The section is enlarged to provide that the failure to furnish required security or proof of financial responsibility is a ground for suspending, revoking or refusing to issue or renew a licence under the Acts set out in the section, the said Acts being complementary to the widened range of farm products.

SECTION 5. Section 8 of the Act authorizes the Lieutenant Governor in Council to make regulations respecting the matters set out in the clauses thereof.

Subsection 1. The re-enacted clauses *b*, *c* and *e* are complementary to the widened range of farm products and the intention that producers may be required to pay fees to a board.

Subsection 2. The new clauses enlarge the authority to make regulations respecting financial responsibility of dealers and prompt payment by dealers and otherwise complement the general intent of the Bill.

shall be grounds for the suspension or revocation of or refusal to issue or renew a licence under the following Acts :

1. *The Farm Products Grades and Sales Act.*

R.S.O. 1970.
cc. 161, 162,
253, 273

2. *The Farm Products Marketing Act.*

3. *The Live Stock Community Sales Act.*

4. *The Milk Act.*

5.—(1) Clauses *b*, *c* and *e* of section 8 of the said Act are repealed ^{s. 8 (*b*, *c*, *e*),} and the following substituted therefor: _{re-enacted}

(*b*) designating marketing boards under *The Milk Act*, local boards under *The Farm Products Marketing Act* or operators engaged in the business of operating community sales under *The Live Stock Community Sales Act*, as producers, and limiting the extent of any such designation;

(*c*) exempting any class or classes of dealers from the application of this Act or the regulations, or any part thereof;

.

(*e*) requiring dealers or producers, or both, to pay fees to a board and prescribing the amounts and the times and manner of payment thereof, and providing for the collecting thereof.

(2) The said section 8 is amended by adding thereto the ^{s. 8.} following clauses: _{amended}

(*ea*) requiring the furnishing of security or proof of financial responsibility by dealers engaged in the marketing of a farm product in respect of which a fund is established and providing for the administration, forfeiture and disposition of any moneys or securities so furnished;

(*eb*) prescribing the manner in which and the conditions under which a dealer shall make payment to producers for a farm product in respect of which a fund is established;

(*ec*) prescribing, for the purposes of clause *a* of section 3, the times when payments become due for a farm product in respect of which a fund is established;

(*ed*) prescribing the terms and conditions under which a person who sells a farm product on behalf of a producer and who is designated as a producer may claim payment from a fund and receive payment therefrom.

Commence-
ment

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is *The Farm Products Payments Amendment Act, 1977*.

An Act to amend
The Farm Products Payments Act

1st Reading

July 6th, 1977

2nd Reading

3rd Reading

THE HON. W. NEWMAN
Minister of Agriculture and Food

(Government Bill)

BILL 45

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to amend
The Farm Products Payments Act**

THE HON. W. NEWMAN
Minister of Agriculture and Food



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 45

1977

An Act to amend The Farm Products Payments Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *c* and *f* of section 1 of *The Farm Products Payments Act*, being chapter 163 of the Revised Statutes of Ontario, 1970, are repealed and the following substituted therefor: s. 1 (c, f).
re-enacted

- (c) “farm product” means such animals, meats, eggs, poultry, wool, milk, cream, cheese, grains, seeds, fruit, vegetables, maple products, honey or tobacco or such classes or parts thereof as are designated in the regulations;

.

- (f) “producer” means a person who produces a farm product and includes, where so designated in the regulations,

- (i) a marketing board under *The Milk Act*, R.S.O. 1970,
c. 273

- (ii) a local board under *The Farm Products Marketing Act*, and R.S.O. 1970,
c. 162

- (iii) an operator engaged in the business of operating community sales under *The Live Stock Community Sales Act*. R.S.O. 1970,
c. 253

2. Subsection 4 of section 2 of the said Act is repealed and the following substituted therefor: s. 2 (4),
re-enacted

(4) The Lieutenant Governor in Council may designate under subsection 1 The Milk Commission of Ontario or The Farm Products Marketing Board as a board constituted for the purposes of this Act and, when so designated, the said Commission or Board shall be deemed for the purposes of

Milk
Commission
and Farm
Products
Marketing
Board may
be a board

this Act, other than subsections 5 and 6 of this section, to be a board constituted under subsection 1.

s. 5 (3),
re-enacted

3. Subsection 3 of section 5 of the said Act is repealed and the following substituted therefor:

Advances
or loans
to board

(3) If, at any time, the amount standing to the credit of a fund is insufficient for the purpose of making payments for claims under this Act, the Lieutenant Governor in Council may authorize the Treasurer of Ontario,

(a) in the case of a fund that exists when this clause comes into force, to advance out of the Consolidated Revenue Fund to the board that administers the fund such sums as are necessary to meet the deficit; or

(b) in the case of any fund, to make out of the Consolidated Revenue Fund to the board that administers the fund loans that do not bear interest and do not exceed in the aggregate \$250,000,

on such terms and conditions as the Lieutenant Governor in Council directs.

Grant
to board

(3a) Where the Lieutenant Governor in Council establishes a fund under subsection 1 of section 2, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make out of the Consolidated Revenue Fund to the board that administers the fund one grant in an amount not exceeding \$25,000.

Payment
out of
fund

(3b) Every board that administers a fund shall pay out of the fund all moneys required for,

(a) the payment of claims under this Act; and

(b) the repayment of advances or loans, as the case may be, under subsection 3.

s. 7,
re-enacted

4. Section 7 of the said Act is repealed and the following substituted therefor:

Failure to
pay fees
or furnish
security

7. Failure,

(a) to pay a fee prescribed in the regulations; or

(b) to furnish security or proof of financial responsibility in accordance with the regulations,

shall be grounds for the suspension or revocation of or refusal to issue or renew a licence under the following Acts:

1. *The Farm Products Grades and Sales Act.*

R.S.O. 1970,
cc. 161, 162,
253, 273

2. *The Farm Products Marketing Act.*

3. *The Live Stock Community Sales Act.*

4. *The Milk Act.*

5.—(1) Clauses *b*, *c* and *e* of section 8 of the said Act are repealed ^{s. 8 (b, c, e),} and the following substituted therefor: _{re-enacted}

(b) designating marketing boards under *The Milk Act*, local boards under *The Farm Products Marketing Act* or operators engaged in the business of operating community sales under *The Live Stock Community Sales Act*, as producers, and limiting the extent of any such designation;

(c) exempting any class or classes of dealers from the application of this Act or the regulations, or any part thereof;

.

(e) requiring dealers or producers, or both, to pay fees to a board and prescribing the amounts and the times and manner of payment thereof, and providing for the collecting thereof.

(2) The said section 8 is amended by adding thereto the ^{s. 8,} following clauses: _{amended}

(ea) requiring the furnishing of security or proof of financial responsibility by dealers engaged in the marketing of a farm product in respect of which a fund is established and providing for the administration, forfeiture and disposition of any moneys or securities so furnished;

(eb) prescribing the manner in which and the conditions under which a dealer shall make payment to producers for a farm product in respect of which a fund is established;

(ec) prescribing, for the purposes of clause *a* of section 3, the times when payments become due for a farm product in respect of which a fund is established;

(*ed*) prescribing the terms and conditions under which a person who sells a farm product on behalf of a producer and who is designated as a producer may claim payment from a fund and receive payment therefrom.

Commence-
ment

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is *The Farm Products Payments Amendment Act, 1977*.

An Act to amend
The Farm Products Payments Act

1st Reading

July 6th, 1977

2nd Reading

July 7th, 1977

3rd Reading

July 7th, 1977

THE HON. W. NEWMAN
Minister of Agriculture and Food

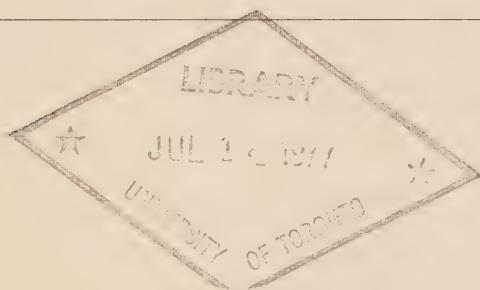
BILL 46

Private Member's Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

An Act to amend The Liquor Licence Act, 1975

MR. DREA



EXPLANATORY NOTE

The Bill provides additional grounds for the non-approval of an application for a liquor licence or the transfer of a licence.

SECTION 1.—Subsection 1. The new clause permits the Liquor Licence Board to refuse to approve an application for a licence or the transfer of a licence for any premises located within a one-half mile radius of another licensed establishment.

Subsection 2. The new clause requires a licensed establishment to inform the Board of the type of entertainment to be provided on the premises. In addition, a licensed establishment must post a notice informing prospective patrons of the kind of entertainment provided on the premises on that day.

BILL 46

1977

An Act to amend The Liquor Licence Act, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 6 of *The Liquor Licence Act, 1975*, ^{s. 6 (1), amended} being chapter 40, is amended by adding thereto the following clause:

(h) the premises in respect of which the application is made is located within one-half mile of an existing licensed premises.

- (2) Subsection 2 of the said section 6 is amended by striking ^{s. 6 (2), amended} out “or” at the end of clause *c*, by adding “or” at the end of clause *d* and by adding thereto the following clause:

(e) to a person who has not filed with the Board,

(i) a description of the type of entertainment, if any, to be provided in the licensed premises, and

(ii) an undertaking to post in a conspicuous place near each entrance to the premises a notice stating the nature of the entertainment provided during each day.

2. This Act comes into force on the day it receives Royal Assent. ^{Commence-}
^{ment}

3. The short title of this Act is *The Liquor Licence Amendment Act, 1977*. ^{Short title}

An Act to amend
The Liquor Licence Act, 1975

1st Reading

July 6th, 1977

2nd Reading

3rd Reading

MR. DREA

(Private Member's Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to amend
The Legislative Assembly Act**

THE HON. R. WELCH
Minister of Culture and Recreation



EXPLANATORY NOTE

The members' indemnity is increased from \$15,000 to \$17,200 and the portion that may be paid per month is increased from \$1,250 to \$1,430.

BILL 47

1977

An Act to amend The Legislative Assembly Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 60 of *The Legislative Assembly Act*, being chapter 240 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 151, section 1, is repealed and the following substituted therefor:
 - (1) An indemnity at the rate of \$17,200 per annum shall be paid to every member of the Assembly. s. 60 (1), re-enacted
Members' indemnities
 - (2) Subsection 5 of the said section 60, as amended by the Statutes of Ontario, 1973, chapter 151, section 1, is repealed and the following substituted therefor: s. 60 (5), re-enacted
 - (5) Notwithstanding subsection 4, upon the request of a member, there shall be paid, out of the moneys that have accrued to him at the time the request is made, any part of his indemnity not exceeding \$1,430 per month and any part of his allowance for expenses not exceeding one-twelfth of his annual allowance for expenses per month. Advances
2. This Act comes into force on the 15th day of September, 1977. Commence-
ment
3. The short title of this Act is *The Legislative Assembly Amendment Act, 1977*. Short title

An Act to amend
The Legislative Assembly Act

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

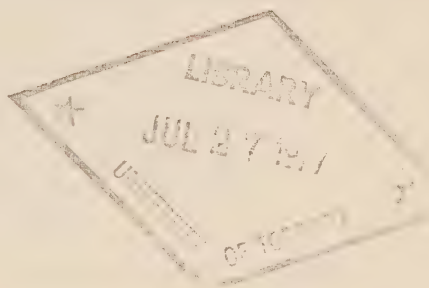
THE HON. R. WELCH
Minister of Culture and Recreation

(Government Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to amend
The Legislative Assembly Act**

THE HON. R. WELCH
Minister of Culture and Recreation



BILL 47

1977

An Act to amend The Legislative Assembly Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 60 of *The Legislative Assembly Act*, being chapter 240 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 151, section 1, is repealed and the following substituted therefor: s. 60 (1),
re-enacted

(1) An indemnity at the rate of \$17,200 per annum shall be paid to every member of the Assembly. Members'
indemnities

- (2) Subsection 5 of the said section 60, as amended by the Statutes of Ontario, 1973, chapter 151, section 1, is repealed and the following substituted therefor: s. 60 (5),
re-enacted

(5) Notwithstanding subsection 4, upon the request of a member, there shall be paid, out of the moneys that have accrued to him at the time the request is made, any part of his indemnity not exceeding \$1,430 per month and any part of his allowance for expenses not exceeding one-twelfth of his annual allowance for expenses per month. Advances

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3. The short title of this Act is *The Legislative Assembly Amendment Act, 1977*. Short title

An Act to amend
The Legislative Assembly Act

1st Reading

July 7th, 1977

2nd Reading

July 12th, 1977

3rd Reading

July 12th, 1977

THE HON. R. WELCH
Minister of Culture and Recreation

BILL 48

Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to amend The Legislative Assembly
Retirement Allowances Act, 1973**

THE HON. R. WELCH
Minister of Culture and Recreation



T O R O N T O

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTES

SECTION 1. Subsection 3 of section 18 of the Act provides for calculation of the amount of the annual allowance.

The calculation is based on 4 per cent of average annual remuneration for the first ten years, 3 per cent for the next ten years, and $2\frac{1}{2}$ per cent for the next two years.

The amendment substitutes for the 3 per cent and $2\frac{1}{2}$ per cent calculations 3.5 per cent of average annual remuneration during the second ten years of service.

SECTION 2. Section 19 of the Act provides for spouses' allowances.

The amendment replaces the one-half allowance to a spouse with a 60 per cent allowance plus 10 per cent in respect of each of not more than three children of the member, and removes the exceptions in the case of the spouse of a member who marries after the age of sixty-five years or after he or she is in receipt of an allowance and in the case of a spouse who remarries.

BILL 48

1977

An Act to amend The Legislative Assembly Retirement Allowances Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *b* and *c* of subsection 3 of section 18 of *The Legislative Assembly Retirement Allowances Act, 1973*, being chapter 152, ^{s. 18 (3) (b), re-enacted; s. 18 (3) (c), repealed} are repealed and the following substituted therefor:

- (b) 3.5 per cent of the average annual remuneration of the person multiplied by the years of service, including part of a year, to his credit over ten years and up to and including twenty years of such service,

.

2. Section 19 of the said Act is repealed and the following substituted therefor: ^{s. 19, re-enacted}

19.—(1) Where a former member who is receiving an ^{Spouse's allowance} allowance dies leaving a spouse, the spouse shall be paid during his or her lifetime an allowance equal to,

- (a) 60 per cent of the allowance that the former member was receiving at the date of his or her death; and
- (b) in respect of each child under the age of eighteen years, to a maximum of three children of the former member, 10 per cent of the allowance that the former member was receiving at the date of his or her death.

- (2) Where a member dies,

Computation
of allowance

- (a) leaving a spouse, the spouse shall be paid during his or her lifetime an allowance equal to the greater of,

- (i) an amount equal to 25 per cent of the annual indemnity of the member in effect immediately before his or her death, or
- (ii) an amount equal to,

A. 60 per cent of the allowance that the member had earned to the date of his or her death, and

B. in respect of each of not more than three children of the member under the age of eighteen years, 10 per cent of the allowance that the member had earned to the date of his or her death,

computed in the manner provided in section 18, but based on the member's service to the time of his or her death, and where the spouse dies leaving a child or children of the former member who at the date of the death of the spouse is or are under the age of eighteen years, an allowance equal to that paid or that would be paid to the spouse shall be paid to the child or children until such age is attained; or

- (b) leaving no spouse but leaving a child or children under the age of eighteen years, an allowance equal to the allowance that would have been paid to the spouse of the member under clause *a* if the spouse had survived the member shall be paid to the child or children until such age is attained.

Option

(3) The spouse,

- (a) of a person who had elected under section 18 to take a deferred allowance at the age when he or she would satisfy the sixty-year rule but who died before satisfying the rule; or
- (b) of a person who was eligible to make an election to take a deferred or an immediate allowance under section 18 but died before making the election,

at any time may elect to take a deferred allowance, in which case, commencing on the day that the person would have satisfied the sixty-year rule had he or she lived, the spouse shall be paid during his or her lifetime an allowance equal to,

- (c) 60 per cent of the allowance to which the person would have been entitled at that time; and

- (d) in respect of each child under the age of eighteen years, to a maximum of three children of the person, 10 per cent of the allowance to which the person would have been entitled at that time,

or may elect to take an immediate allowance, in which case the spouse shall be paid during his or her lifetime an allowance equal to the amount calculated in accordance with clauses *c* and *d* reduced actuarially in accordance with the tables prescribed by the regulations, which the person would have been entitled to receive at the time of the spouse's election.

(4) Where a person referred to in clause *a* or *b* of sub-^{Idem} section 3 dies leaving no spouse but leaving a child or children under the age of eighteen years, an allowance equal to the immediate allowance provided for in subsection 3, reduced actuarially in accordance with the tables prescribed by the regulations for the purposes of subsection 3, shall be paid to the child or children until such age is attained.

(5) For the purposes of this section, a person who has attained the age of eighteen years but has not attained the age of twenty-five years and who is in full-time attendance at a school, college, university or other institution that is recognized by the Board of Internal Economy for the purposes of this section as a place of higher education, shall be deemed not to have attained the age of eighteen years.^{Exception for higher education}

3. This Act comes into force on the day it receives Royal Assent.<sup>Commence-
ment</sup>
4. The short title of this Act is *The Legislative Assembly Retirement Allowances Amendment Act, 1977*.^{Short title}

BILL 48

An Act to amend
The Legislative Assembly Retirement
Allowances Act, 1973

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

THE HON. R. WELCH
Minister of Culture and Recreation

(Government Bill)

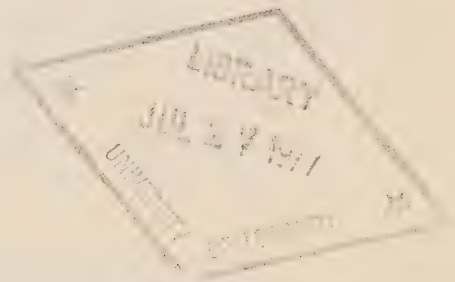
BILL 48

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

**An Act to amend The Legislative Assembly
Retirement Allowances Act, 1973**

THE HON. R. WELCH
Minister of Culture and Recreation



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 48

1977

An Act to amend The Legislative Assembly Retirement Allowances Act, 1973

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses *b* and *c* of subsection 3 of section 18 of *The Legislative Assembly Retirement Allowances Act, 1973*, being chapter 152, are repealed and the following substituted therefor:

s. 18 (3) (b),
re-enacted;
s. 18 (3) (c),
repealed

- (b) 3.5 per cent of the average annual remuneration of the person multiplied by the years of service, including part of a year, to his credit over ten years and up to and including twenty years of such service,

.

2. Section 19 of the said Act is repealed and the following substituted therefor:

s. 19,
re-enacted

19.—(1) Where a former member who is receiving an allowance dies leaving a spouse, the spouse shall be paid during his or her lifetime an allowance equal to,

Spouse's
allowance

- (a) 60 per cent of the allowance that the former member was receiving at the date of his or her death; and
- (b) in respect of each child under the age of eighteen years, to a maximum of three children of the former member, 10 per cent of the allowance that the former member was receiving at the date of his or her death.

- (2) Where a member dies,

Computation
of allowance

- (a) leaving a spouse, the spouse shall be paid during his or her lifetime an allowance equal to the greater of,

(i) an amount equal to 25 per cent of the annual indemnity of the member in effect immediately before his or her death, or

(ii) an amount equal to,

A. 60 per cent of the allowance that the member had earned to the date of his or her death, and

B. in respect of each of not more than three children of the member under the age of eighteen years, 10 per cent of the allowance that the member had earned to the date of his or her death,

computed in the manner provided in section 18, but based on the member's service to the time of his or her death, and where the spouse dies leaving a child or children of the former member who at the date of the death of the spouse is or are under the age of eighteen years, an allowance equal to that paid or that would be paid to the spouse shall be paid to the child or children until such age is attained; or

(b) leaving no spouse but leaving a child or children under the age of eighteen years, an allowance equal to the allowance that would have been paid to the spouse of the member under clause *a* if the spouse had survived the member shall be paid to the child or children until such age is attained.

Option

(3) The spouse,

(a) of a person who had elected under section 18 to take a deferred allowance at the age when he or she would satisfy the sixty-year rule but who died before satisfying the rule; or

(b) of a person who was eligible to make an election to take a deferred or an immediate allowance under section 18 but died before making the election,

at any time may elect to take a deferred allowance, in which case, commencing on the day that the person would have satisfied the sixty-year rule had he or she lived, the spouse shall be paid during his or her lifetime an allowance equal to,

(c) 60 per cent of the allowance to which the person would have been entitled at that time; and

- (d) in respect of each child under the age of eighteen years, to a maximum of three children of the person, 10 per cent of the allowance to which the person would have been entitled at that time,

or may elect to take an immediate allowance, in which case the spouse shall be paid during his or her lifetime an allowance equal to the amount calculated in accordance with clauses *c* and *d* reduced actuarially in accordance with the tables prescribed by the regulations, which the person would have been entitled to receive at the time of the spouse's election.

(4) Where a person referred to in clause *a* or *b* of sub-^{Idem} section 3 dies leaving no spouse but leaving a child or children under the age of eighteen years, an allowance equal to the immediate allowance provided for in subsection 3, reduced actuarially in accordance with the tables prescribed by the regulations for the purposes of subsection 3, shall be paid to the child or children until such age is attained.

(5) For the purposes of this section, a person who has^{Exception for higher education} attained the age of eighteen years but has not attained the age of twenty-five years and who is in full-time attendance at a school, college, university or other institution that is recognized by the Board of Internal Economy for the purposes of this section as a place of higher education, shall be deemed not to have attained the age of eighteen years.

3. This Act comes into force on the day it receives Royal Assent.<sup>Commence-
ment</sup>
4. The short title of this Act is *The Legislative Assembly Retirement Allowances Amendment Act, 1977*.^{Short title}

An Act to amend
The Legislative Assembly Retirement
Allowances Act, 1973

1st Reading

July 7th, 1977

2nd Reading

July 12th, 1977

3rd Reading

July 12th, 1977

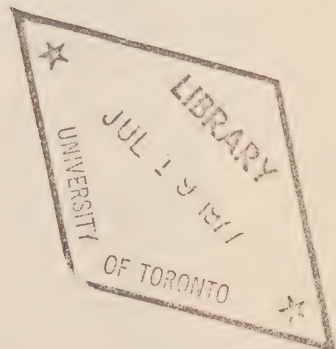
THE HON. R. WELCH
Minister of Culture and Recreation

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act respecting Municipal Elections

THE HON. W. D. McKEOUGH
Treasurer of Ontario and Minister of Economics and
Intergovernmental Affairs



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill revises the existing *Municipal Elections Act*, enacted in 1972 and extensively amended in 1974.

Among the principal changes incorporated in the Bill are the following:

1. "holiday" is defined as Thanksgiving Day and Remembrance Day; when any proceedings relating to an election falls to be taken on a holiday the proceeding shall be taken instead on the next preceding day that is not a holiday. (s. 1, par. 15; s. 120).
2. It is made clear that a candidate in an election is not eligible to be appointed a deputy returning officer or a poll clerk. (s. 4 (1)).
3. The clerk is empowered to delegate certain of his statutory duties and authority to his election assistants. (s. 4 (6)).
4. Polling day is changed from the first Monday in December to the third Monday in November. (s. 11).
5. All qualified electors are entitled to vote on money by-laws, rather than only owners of land and long-term tenants; the right of corporate nominees to vote on money by-laws is removed. (s. 16).
6. Nomination day is fixed as the Monday three weeks before polling day; in addition nominations may be filed in the office of the clerk during the week immediately preceding nomination day. (s. 35).
7. The occupation of a candidate will no longer be shown on nomination papers or ballots. (ss. 36, 43).
8. The opening of the poll is advanced from 11 o'clock in the forenoon to 9 o'clock. (s. 52).
9. Provision is made for two mandatory advance polls, one on the Saturday and the other on the Monday nine days and seven days respectively before polling day. (s. 66).
10. Voting proxy certificates may be obtained from the clerk up to the Friday preceding polling day. (s. 67 (5)).
11. The clerk is given powers to adopt any necessary procedures for the conduct of the poll when an emergency situation arises on polling day. (s. 69).
12. Certain technical changes are made in respect of the procedure on recounts. (s. 83).
13. In the event of a tie following a recount, the clerk is directed to give a casting vote to decide the election; except for such casting vote the clerk is not entitled to vote at an election. (s. 85).
14. Notices required under the Act, may, at the option of the municipality, be printed in the French language in addition to the English language. (s. 119).

An Act respecting Municipal Elections

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

1. "advance poll" means a poll held under section 66;
2. "assessment commissioner" in relation to a municipality means the assessment commissioner appointed under *The Assessment Act* for the assessment region in which the municipality is situate;
3. "assistant returning officer" means a person appointed by the clerk to assist him in the conduct of the election;
4. "assistant revising officer" means a person appointed by the clerk to assist him in the revision of the list of electors;
5. "candidate" means a person who is nominated for election to office in accordance with this Act and whose nomination is certified by the clerk;
6. "clerk" with respect to a municipality means the clerk of the municipality;
7. "constable" means a constable or a person appointed as a constable by the clerk or the deputy returning officer to maintain peace and order at an election;
8. "corrupt practice" means any act or omission in connection with an election in respect of which an offence is provided under the *Criminal Code* (Canada) or which is a corrupt practice under this Act;
9. "deputy returning officer" means a deputy returning officer appointed for a polling place under this Act;

R.S.O. 1970,
c. 32

R.S.C. 1970,
c. C-34

10. "election" means an election governed by this Act;
11. "election assistant" means a person appointed by the clerk to assist in the conduct of an election;
12. "election year" means a year in which a regular election is held in accordance with the provisions of this Act;
13. "elector" means a person entitled under this Act to vote in an election;
14. "enumerated" means enumerated under *The Assessment Act*;
15. "holiday" means Thanksgiving Day and Remembrance Day;
16. "local board" means a local board as defined in *The Municipal Affairs Act*;
17. "locality" means territory without municipal organization that is deemed a district municipality under *The Education Act, 1974*;
18. "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
19. "municipality" means a city, town, village or township;
20. "new election" means an election other than a regular election;
21. "nomination day" means the last day for filing nominations;
22. "oath" includes an affirmation;
23. "office" means an office, the election to which is governed by this Act;
24. "owner or tenant" means a person enumerated as owner or tenant of land separately assessed or liable to be separately assessed under *The Assessment Act*;
25. "polling day" means the day on which the poll is to be taken under this Act;
26. "polling list" means the list of electors for each polling subdivision revised and certified by the clerk;

R.S.O. 1970,
c. 32

R.S.O. 1970,
c. 118

1974, c. 109

27. "polling place" means the room in which the facilities for the conduct of the poll are situate;
28. "polling subdivision" means a polling subdivision established by the clerk under this Act;
29. "preliminary list" means a preliminary list of electors;
30. "prescribed" means prescribed by the Minister;
31. "public school elector" means an elector who is not a separate school elector;
32. "quorum" means a majority of the members of council or of a local board or the trustees of a police village, as the case may be;
33. "regular election" means an election required to be held under section 10 of this Act;
34. "residence", and similar expressions used in relation to a person, means his true, fixed, permanent home or lodging place to which whenever he is absent he has the intention of returning, subject to the following rules:
 - (a) The place where a person's family resides shall be his residence unless he takes up or continues his residence at some other place with the intention of remaining there, in which case he shall be deemed to be a resident of such other place.
 - (b) The place where a person occupies a room or part of a room as a regular lodger or to which he habitually returns not having any other permanent lodging place, shall be deemed to be his residence;
35. "scrutineer" means any person appointed as a scrutineer by a candidate or by a council under section 6;
36. "separate school elector" means an elector who is a Roman Catholic separate school supporter or who is a Roman Catholic and the spouse of such supporter and any person entitled to be a separate school elector under *The Education Act, 1974*, 1972, c. 95, s. 1; 1974, c. 109 1974, c. 32, s. 1, *amended*.

APPLICATION OF ACT

Application
of Act

2. Notwithstanding any other general or special Act, this Act applies to and governs all elections,

(a) to the offices of,

(i) member of the council of a municipality,

(ii) member of the council of a regional municipality where such office is required to be filled by a vote of the electors of an area municipality,

(iii) trustee of a police village,

(iv) member of a local board whose members are to be elected at elections required by law to be conducted by the same officers and in the same manner as elections of members of the council of a municipality;

(b) to obtain the assent of electors on any by-law required or authorized by law to be submitted for their assent at an election; and

(c) to obtain the opinion of the electors on any question required or authorized by law to be submitted to the electors at an election. 1975, c. 95, s. 2 (1), *amended*.

ELECTION OFFICIALS

Returning
and
revising
officer

3.—(1) Subject to subsections 2 and 3, the clerk of a municipality is the returning officer and revising officer for the purpose of the conduct of elections within the municipality or a part thereof.

Returning
officer in
police
village

(2) For the purpose of elections of trustees of a police village, the clerk of the municipality in which the police village is located shall be the returning officer for the election and where the police village is located in two or more municipalities,

(a) the nominations for trustees shall be filed with the clerk of the municipality having the largest number of electors of the police village who shall send to the clerk of each municipality concerned by registered mail within forty-eight hours after the closing of nominations the names of the candidates; and

- (b) the clerk of each other municipality in which part of the police village is located shall be the returning officer for the vote to be recorded in his municipality and he shall forthwith report the vote recorded to the returning officer referred to in clause *a* who shall prepare the final summary and announce the vote.

(3) The clerks of municipalities to which subsections 23 and 28 of section 57 and subsection 21 of section 110 of *The Education Act, 1974* apply shall perform the duties as returning officers for the purposes of an election under this Act as are specified in those provisions. 1972, c. 95, s. 3, *amended*. Clerks, duties in relation to school boards 1974, c. 109

4.—(1) The clerk of every municipality shall for the purposes of an election appoint a deputy returning officer and a poll clerk for each polling place established in the municipality and, as far as is practicable, the deputy returning officers and poll clerks shall be appointed for polling places for the polling subdivisions in which they reside but no candidate is eligible to be appointed as a deputy returning officer or poll clerk. 1972, c. 95, s. 4 (1), *amended*. D.R.O. and poll clerk

(2) If a deputy returning officer or poll clerk signifies to the clerk that he will not act, the clerk shall appoint another person to act in his place. Where unable to act

(3) If a deputy returning officer or poll clerk does not attend at the opening of the poll, the clerk shall appoint another person to act in his place. Non-attendance of D.R.O., poll clerk

(4) If a deputy returning officer through illness or for any other reason becomes unable to perform his duties on polling day, the poll clerk shall perform his duties and exercise all his powers and the clerk shall appoint some other person as the poll clerk for the polling place. 1972, c. 95, s. 4 (2-4), *amended*. Poll clerk to act for D.R.O.

(5) The clerk may appoint election assistants, assistant returning officers and assistant revising officers to assist him in the performance of his duties and provide for such clerical and other assistance as is necessary for such purpose, but no candidate is eligible for any such appointment. 1972, c. 95, s. 4 (5), *amended*. Assistants

(6) The clerk may, in writing, delegate to the assistant returning officers and assistant revising officers appointed under subsection 5, such of his statutory rights and duties in relation to the preparation for and conduct of the election as he considers necessary. *New*. Delegation by clerk

Duties of
poll clerk

(7) The poll clerk and an election assistant, if any, shall assist the deputy returning officer in the performance of the duties of his office and shall obey his orders. 1972, c. 95, s. 4 (6).

Oath

(8) Every returning officer, deputy returning officer, poll clerk, election assistant, assistant returning officer, assistant revising officer, scrutineer, constable and other person authorized to attend at a polling place shall, before entering upon his duties, take and subscribe an oath in the prescribed form. 1972, c. 95, s. 4 (7); 1974, c. 32, s. 2.

Oath of
D.R.O.

(9) The appointment and oath of the deputy returning officer under subsection 8 shall be endorsed upon or attached to the poll book for the polling place for which he is appointed. 1972, c. 95, s. 4 (8).

Who may
administer
oaths

5.—(1) Except where otherwise provided, an oath may be administered by any person authorized by law to administer oaths in Ontario.

Idem

(2) The clerk may administer any oath required by this Act, and deputy returning officers and poll clerks may administer any such oath except an oath to be taken by the clerk.

No charge

(3) Every person administering an oath under or for the purposes of this Act shall administer the oath gratuitously. 1972, c. 95, s. 5.

Scrutineers
appointed by
candidate

6.—(1) Each candidate may appoint in writing such number of persons who are at least sixteen years of age as he considers advisable as scrutineers to represent him in a polling place and at the counting of votes under this Act. 1972, c. 95, s. 6 (1), *amended*.

Limit on
number
present

(2) Not more than one scrutineer representing each candidate may be present for any of the purposes specified in subsection 1 at any time. 1972, c. 95, s. 6 (2).

Scrutineers
appointed
by council

(3) The council of a municipality may, if requested to do so, by resolution appoint as scrutineers in relation to voting on any by-law or question submitted to the electors at an election two persons to attend at the final summing up of the votes by the clerk and two persons to attend at each polling place, one such person in each case on behalf of the persons interested in and desirous of promoting the proposed by-law or voting in the affirmative on the question and the other such person on behalf of the persons interested in and desirous of opposing the proposed by-law or voting in the negative on the question. 1972, c. 95, s. 7 (1).

7. A person appointed as a scrutineer under section 6, ^{Production of} before being admitted to a polling place shall, if so requested, ^{of} produce and show his appointment to the deputy returning officer for the polling place. 1974, c. 32, s. 4, *amended*.

COSTS OF ELECTION

8.—(1) Except where otherwise specifically provided by ^{Cost of} this or any other special or general Act, the cost of an ^{election} election shall be borne by the municipality in which it is held.

(2) The reasonable expenses incurred by a clerk or any other ^{Expenses} officer for printing, providing ballot boxes, ballot papers, ^{of officers} materials for marking ballot paper, and balloting compartments, and for the transmission of packets, and reasonable fees and for allowances for services rendered under this Act or otherwise on account of an election shall be paid by the treasurer of the municipality to the persons entitled thereto. 1972, c. 95, s. 8 (1, 2).

(3) Where the clerk of a municipality is required to conduct ^{Expenses of} an election of a member or members of a local board other ^{by election} than at a regular election, the board shall forthwith after ^{of local} its organization reimburse the treasurer of the municipality ^{board} for the cost of employing deputy returning officers, poll clerks and other election officials and for the reasonable expenses incurred by the clerk or any other officer of the municipality for advertising the times and places for nomination and of polls, for printing, for providing ballot boxes, ballot papers, materials for marking ballot papers, and balloting compartments, for the transmission of packets, and for reasonable costs including the cost of printing and distribution of but not preparation otherwise of the polling list. 1972, c. 95, s. 8 (3), *amended*.

TERM OF OFFICE

9.—(1) Notwithstanding any other general or special Act ^{Two-year} and except where otherwise specifically provided in this Act, the ^{term} term of office of all offices, the election to which is governed by this Act, shall be two years, commencing on the first day of January in the year following an election year.

(2) The holders of offices hold office until their successors ^{Until new} are elected and the newly elected council or local board is ^{council} organized. 1972, c. 95, s. 9.

BIENNIAL ELECTIONS

10.—(1) An election shall be held in accordance with this ^{Election} Act in each municipality in the year 1978 and in every ^{year}

second year thereafter for the purpose of electing persons to offices. 1972, c. 95, s. 10 (1), *amended*.

Vote on
question,
etc.

(2) Where a by-law requires the assent or a question is authorized or required to be submitted to obtain the opinion of the electors, the vote thereon shall be taken at the next regular election unless otherwise provided by order of the Ontario Municipal Board. 1972, c. 95, s. 10 (4).

POLLING DAY

Polling
day

11. Polling day in a regular election shall be the third Monday in November in each election year. 1972, c. 95, s. 11, *amended*.

QUALIFICATION OF ELECTORS

Electors,
resident

12. A person is entitled to be an elector in a municipality if he is not disqualified under this or any other Act or otherwise prohibited by law from voting in the election and if, at any time during the period commencing on the Tuesday following the first Monday in September and ending on the second Tuesday in October in an election year, he,

- (a) is a resident in such municipality;
- (b) is a Canadian citizen or other British subject; and
- (c) has attained the age of eighteen years or on or before polling day will attain the age of eighteen years. 1974, c. 32, s. 5, *part*.

Electors,
non-resident

13. A person is entitled to be an elector in a municipality if he is not disqualified under this or any other Act or otherwise prohibited by law from voting in the election and is not resident in such municipality at any time during the period commencing on the Tuesday following the first Monday in September and ending on the second Tuesday in October in an election year, but at any time during such period, he,

- (a) is the owner or tenant of land in the municipality or the spouse of such an owner or tenant;
- (b) is a Canadian citizen or other British subject; and
- (c) has attained the age of eighteen years or on or before polling day will attain the age of eighteen years. 1974, c. 32, s. 5, *part*.

14. No judge of any court is qualified to vote in any election. 1974, c. 32, s. 5, *part*. Judges not qualified to vote

15. For the purpose of sections 12 and 13, a statutory declaration by a person claiming that he is a Canadian citizen or other British subject is *prima facie* proof of the fact declared to. 1972, c. 95, s. 14. Evidence of citizenship

QUALIFICATION OF ELECTORS TO VOTE ON MONEY BY-LAWS

16. Every person entitled to be an elector in a municipality under section 12, 13 or 33 is entitled to be an elector to vote on a money by-law submitted for the assent of the electors of the municipality. 1972, c. 95, s. 15, *part*. Who may vote on money by-laws

POLLING SUBDIVISIONS

17. Subject to section 18, the clerk shall divide the municipality into polling subdivisions and shall not later than the first day of April in an election year inform the assessment commissioner of the boundaries of each subdivision. 1972, c. 95, s. 17 (1); 1974, c. 32, s. 8, *amended*. Polling subdivisions

18. A polling subdivision shall not, Size

- (a) so far as is practicable, contain more than 350 electors; or
- (b) extend beyond the boundaries of one ward or of an electoral district established for the purposes of the election of members to the Assembly. 1972, c. 95, s. 17 (2).

PREPARATION OF PRELIMINARY LIST OF ELECTORS

19. An assessment commissioner shall, during the period commencing on the Tuesday following the first Monday in September and ending on the 30th day of September in an election year, from an enumeration taken during that period, compile for each polling subdivision in each municipality and locality in his assessment region a list containing the name and address of each person who meets the requirements for an elector under section 12 or 13 and such list shall signify opposite the name of an elector, Preliminary list of electors

- (a) who does not reside in the municipality, that he does not so reside;
- (b) who is enumerated as a Roman Catholic separate school supporter, that he is a separate school elector;

(c) who is a Roman Catholic and the spouse of a Roman Catholic separate school supporter, that such spouse is a separate school elector;

1974, c. 109

(d) who is enumerated as a separate school elector in accordance with *The Education Act, 1974*, that he is a separate school elector;

(e) who is an owner or tenant of land in the municipality, that he is such an owner or tenant. 1972, c. 95, s. 18; 1974, c. 32, s. 9, *amended*.

For polling
subdivision
where no
wards

20.—(1) In a municipality or locality that is not divided into wards, the name of an elector shall be entered on the preliminary list,

(a) for the polling subdivision in which the elector resides; or

(b) if the elector does not reside in the municipality or locality, for the polling subdivision in which he or his spouse is owner or tenant of land.

For one
polling
subdivision
only

(2) The name of an elector shall not be entered under this section on the preliminary list for more than one polling subdivision. 1972, c. 95, s. 19.

For polling
subdivision
where wards

21.—(1) In a municipality that is divided into wards, the name of an elector shall be entered in the preliminary list,

(a) where he resides in the municipality, for the polling subdivision in which he resides; or

(b) where he does not reside in the municipality, for a polling subdivision of a ward in which he or his spouse is the owner or tenant of land.

For one
polling
subdivision

(2) The name of an elector shall not be entered under this section in the preliminary list for more than one polling subdivision. 1972, c. 95, s. 20.

List
delivered
to clerk

22. The assessment commissioner shall deliver the list of electors prepared by him under sections 19, 20 and 21 to the clerk and, in respect of a locality, to the secretary of the school board on or before the thirty-first day after the commencement date of the enumeration period in an election year. 1972, c. 95, s. 21, *amended*.

Correction
of list if
manifest
errors in it

23. Where it is apparent to the clerk or the secretary of the school board that the list or part thereof delivered to him under section 22 is not in conformity with the require-

ments for the polling subdivisions or that the list contains gross or manifest errors, the clerk or the secretary, as the case may be, prior to the printing or reproduction of the list required under section 24, correct the list or part thereof and shall forthwith notify the assessment commissioner of such corrections. 1974, c. 32, s. 10, *amended*.

PRELIMINARY LIST OF ELECTORS

24. Immediately after receipt of the list of electors delivered by the assessment commissioner under section 22, the clerk or secretary of the school board referred to in the said section 22, after making corrections, if any, under section 23, shall cause the list to be printed or reproduced and such list shall be the preliminary list of electors. 1974, c. 32, s. 11. Printing
of list

REVISION OF PRELIMINARY LIST OF ELECTORS

25.—(1) Immediately after the printing or reproduction of the preliminary list of electors, the clerk shall, Revision
of list

- (a) fix the places at which and the times when revision of the list will be undertaken;
- (b) post one copy of the list in a conspicuous place in his office;
- (c) post one copy of the list for each polling subdivision in a conspicuous place in the polling subdivision for which it is prepared in a weather-proof cover on which shall be indicated that the defacing, damaging or destruction of the list is an indictable offence under section 335 of the *Criminal Code* (Canada); and R.S.C. 1970,
c. C-34
- (d) post notice of the date of the posting of the list, the last day for filing applications for revision of the list for the purpose of including names of electors who have not been included or of making additions or corrections to or deletions from the list, and the places and times at which the revision of the list will be undertaken in at least two conspicuous places in the municipality, and where there is a newspaper having general circulation in the municipality, publish the notice in such newspaper. 1972, c. 95, s. 23 (1); 1974, c. 32, s. 12 (1), *amended*.

(2) The day of posting copies of the preliminary list and of publishing the notice under subsection 1 shall be at least five Time for
posting

days before the last day for filing applications for revision. 1972, c. 95, s. 23 (2); 1974, c. 32, s. 12 (2), *amended*.

Last day
for filing
applications
for revision
of preliminary
list

(3) The last day for the filing of applications for revision of the preliminary list shall be the Wednesday immediately preceding nomination day and such applications may be filed with the clerk during his normal office hours. 1974, c. 32, s. 12 (3), *amended*.

Notice
affixed
to list

(4) The clerk shall affix to the outside or cover of each copy of the preliminary list of electors for an election a notice in prescribed form, over his name,

- (a) stating that the list is a preliminary list of all electors for the election or is a preliminary list of all electors for the polling subdivision, as the case may be, prepared as required by this Act;
- (b) setting forth the date on which the list was posted up in the office of the clerk;
- (c) giving notice to all electors to examine the list for the purposes of making additions or corrections to or deletions from the list; and
- (d) stating the last day for filing applications concerning such inclusions, additions, corrections or deletions. 1972, c. 95, s. 23 (3); 1974, c. 32, s. 12 (4).

Copies
of list

(5) At the time of posting a notice under subsection 1, the clerk shall deliver or mail one copy of the preliminary list to,

- (a) the assessment commissioner;
- (b) every member of the council of the municipality and every trustee of a police village all or part of which is in the municipality;
- (c) the secretary of every local board the members of which are required to be elected at an election to be conducted by the clerk;
- (d) the clerk of the council of the county or of the district, regional or metropolitan municipality in which the municipality is situate;
- (e) the clerk of the municipality responsible for conducting the elections in any combined area for school board purposes;

- (f) the member of the House of Commons and the member of the Assembly representing the electoral district in which the municipality or any part thereof is situate.

(6) Every candidate for any office in an election is entitled to be furnished by the clerk with two copies of the preliminary list of electors entitled to vote in an election to such office. 1972, c. 95, s. 23 (4, 5). Candidates entitled to copies

26.—(1) The clerk or an assistant revising officer shall attend at the revision of the preliminary list and shall continue to do so from day to day or as required until all applications filed on or before the last day for filing applications for revision of the list have been disposed of. 1974, c. 32, s. 13, *part, amended*. Revision of list

(2) Notwithstanding that the time for filing applications for revision of the preliminary list under section 25 has not expired, the clerk may proceed to consider such applications as from time to time may be received and may determine and dispose of them. 1974, c. 32, s. 13, *part*. When applications may be considered

27.—(1) A person whose name has not been included in the preliminary list for a polling subdivision in a municipality or whose name has been included therein but the information relating to him set out therein is incorrect or whose name has been included therein as a non-resident and who is qualified to be an elector in more than one ward in the municipality may apply to the clerk or assistant revising officer of the municipality on or before the last day for filing applications for revision of the list to have his name included on the list or to have such information corrected or to have his name deleted from the list and to have it entered in the list of another ward in which he or his spouse is the owner or tenant of land. Application to enter name in list or correct information

(2) Every person applying under this section shall sign an application in the prescribed form in which all the information shall be sufficiently filled in, either by the applicant personally or by the clerk or assistant revising officer at the applicant's request and shall declare that he understands the effect of the statements in the application and that he is an elector entitled to have his name included on the list or to have the list corrected pursuant to his request before the clerk or assistant revising officer enters his name on the list or corrects the preliminary list, as the case may be. 1972, c. 95, s. 25 (1, 2). Application and declaration

Application
filed person-
ally or by
agent

(3) An application made under this section and duly signed by the applicant may be filed by the applicant or by his agent on his behalf. 1974, c. 32, s. 14.

Interpreter

(4) When the language of an applicant under this section is not understood by the clerk or assistant revising officer, an interpreter provided by the applicant may be sworn and may act, but in the event of inability to secure an interpreter, the application may be refused.

Decision
to amend
list

(5) If it appears to the clerk or assistant revising officer that an applicant under this section understands the effect of the statements in the application and that the applicant is an elector whose name should be included in the polling list or that the amendment thereof that he requests should be made, he shall certify accordingly by signing the application.

Refusal to
amend list

(6) If, in the opinion of the clerk or assistant revising officer, the statements made by an applicant in his application under this section do not show that the applicant is an elector entitled to have his name included in the polling list or to have the list amended as requested, he shall inform the applicant that his application is refused, stating the reasons for such refusal, which reasons he shall endorse on the application form. 1972, c. 95, s. 25 (3-5).

Application
for deletion
of name

28.—(1) At any time after the posting of the preliminary list of electors for a municipality and until the last day for filing applications for revision thereof, any person may file with the clerk an application, in the prescribed form, for deletion from the list of the name of a person who is not entitled as an elector to have his name entered thereon. 1972, c. 95, s. 26 (1); 1974, c. 32, s. 15 (1).

Notice to
person
where name
objected to

(2) The clerk, upon receipt of an application under this section, shall forthwith cause to be served personally on or sent by registered mail to the person concerning whom the application is made at the address given in the preliminary list and at such other address, if any, as may be mentioned in the application, a notice of hearing requiring such person to appear in person or by his representative on a day and at a time to be fixed in the notice.

Copy of
application
to be served

(3) A copy of the application shall accompany a notice served or sent under subsection 2.

Notice to
applicant

(4) The clerk shall notify the applicant of the time and place of the hearing.

Decision of
clerk, etc.

(5) On the day for the hearing fixed in a notice given under this section, the person filing the application shall

attend before the clerk or assistant revising officer to establish the validity of such application and the clerk or assistant revising officer, after reviewing an explanation of the facts alleged and after hearing what is alleged by the person concerning whom the application was made or by his representative, may delete the name from the preliminary list if he is satisfied of the validity of the application.

(6) Where a person concerning whom an application has been made under this section or his representative does not attend before the clerk or assistant revising officer on the day of hearing fixed in the notice and the clerk or assistant revising officer is satisfied that due notice of application has been given to the person or that he could not be found and the registered notice could not be delivered, the clerk or assistant revising officer may delete the name of such person from the preliminary list of electors but shall not do so except upon evidence under oath which satisfies him that the name should not have been included in the list. 1974, c. 32, s. 15 (2).

Where person
objected to
does not
appear

29. Subject to section 33 or 56, the decision of the clerk or assistant revising officer to enter on or delete the name of a person as an elector from the preliminary list of electors is final for the purposes of this Act. 1972, c. 95, s. 27.

Decision
final

30. Upon determination of all applications for revision of the preliminary list of electors for a municipality filed on or before the last day for filing applications for revision thereof, the clerk shall compile a statement of inclusions in, additions and changes to and deletions from the list, bearing the full name and address of each person who is the subject of the inclusion, addition, change or deletion, and shall send a certified copy of such statement to each person specified in subsections 5 and 6 of section 25. 1974, c. 32, s. 16, *amended*.

Statement
of change

POLLING LIST

31. After compilation of the statement of additions, changes and deletions required under section 30, the clerk shall prepare the polling list of electors for each polling subdivision in his municipality by making the appropriate changes in the preliminary list in accordance with the statement and shall certify the list as so revised. 1972, c. 95, s. 29 (1).

Polling list

32. Except as provided in sections 33, 51 and 56 no person is entitled to vote at an election unless his name appears in the polling list certified under section 31 for the polling subdivision in which he tenders his vote. 1972, c. 95, s. 30.

Only
persons
in list
entitled
to vote

Entry of name
on list by
D.R.O.

33.—(1) If a person whose name is omitted from a polling list certified under section 31, at any time after preparation of the polling list and prior to the closing of the poll, satisfies the clerk of the municipality on oath that he was entitled to be an elector under section 12 or 13 and to have his name entered on the preliminary list for the municipality, the clerk may issue a certificate in the prescribed form authorizing the deputy returning officer for the proper polling subdivision to enter the name of the elector on the polling list for the subdivision and to permit such person to vote, but such vote must be cast before the closing of the poll.

Idem

(2) Where the name of a person is omitted from the polling list as finally revised and such person satisfies the clerk of the municipality on oath that he was under section 12 or 13 otherwise entitled to be an elector and to be entered on the preliminary list except that he was not a Canadian citizen or other British subject, if such person produces for the inspection of the clerk his certificate of naturalization or other conclusive evidence that he has become a Canadian citizen or other British subject, the clerk may issue a certificate authorizing the proper deputy returning officer to enter the name of such person on the polling list to entitle him to vote as if his name had been entered thereon before the list was revised. 1974, c. 32, s. 18 (1).

Certificate
to be
produced

(3) A person is not entitled to vote under this section unless at the time he requests a ballot he produces and files with the deputy returning officer the certificate given by the clerk under subsection 1 or 2. 1972, c. 95, s. 31 (3); 1974, c. 32, s. 18 (2).

Copy to
assessment
com-
missioner

(4) The clerk shall furnish a copy of each certificate issued under this section to the assessment commissioner before the first Monday in an election year. 1974, c. 32, s. 18 (3), *part, amended*.

Entry in
poll book

(5) The deputy returning officer shall enter or cause to be entered in the column for remarks in the poll book opposite the name and residence of the person voting under the authority of a certificate issued under this section, the words "Voted under section 33 certificate".

Certificates
to be kept
in separate
envelope

(6) The deputy returning officer shall enclose all certificates to which this section applies in one envelope. 1974, c. 32, s. 18 (3), *part*.

NOMINATIONS

Who may be
nominated

34. Any person who is qualified to hold an office under the Act constituting the office may be nominated as a candidate for such office. 1972, c. 95, s. 32.

35.—(1) Nomination day for a regular election shall be Monday, the twenty-first day before polling day. 1972, c. 95, s. 33 (1). Nomination day

(2) Persons may be nominated as candidates in an election between 9 o'clock in the forenoon and 5 o'clock in the afternoon of nomination day, but nothing in this section prevents a person from filing a nomination paper with the clerk between 9 o'clock in the forenoon and 6 o'clock in the afternoon on the Monday to Friday inclusive of the week immediately prior to nomination day. 1974, c. 32, s. 19 (2), *part, amended*. Period for nomination

(3) The clerk shall, at least six days prior to nomination day, post in at least two conspicuous places in the municipality notice of the date and times for filing nominations and of the offices for which persons may be nominated as candidates in the election, and, where there is a newspaper having general circulation in the municipality, publish at least six days prior to nomination day the notice in such newspaper. 1974, c. 32, s. 19 (2), *part, amended*. Notice of time for filing nominations

36.—(1) Subject to subsection 2 of section 35, a person may be nominated as a candidate for an office by filing in the office of the clerk, on the day and during the hours specified in subsection 2 of section 35, a nomination paper in prescribed form which, How nominated

- (a) shall be signed by at least ten electors whose names are entered, or entitled to be entered under section 33, in the polling lists of electors entitled to vote in an election to such office;
- (b) shall state the name and address of the person nominated in such manner as will identify him and the office for which he is nominated; and
- (c) shall state the name and address of each elector signing the nomination paper and, where the office for which the person is nominated is a member of a school board, that such nominator is a public school elector or a separate school elector, as the fact is. 1974, c. 32, s. 20 (1), *amended*.

(2) No nomination is valid unless there is filed with the nomination paper a consent in writing to the nomination and a declaration of qualification in the prescribed form by the person nominated. 1972, c. 95, s. 34 (2). Consent and declaration to be filed

(3) A nomination paper nominating a person for an office the holder of which is required to be elected by public school electors shall be signed by public school electors only. 1972, c. 95, s. 34 (3); 1974, c. 32, s. 20 (2). Public school nominators

Separate
school
nominators

(4) A nomination paper nominating a person for an office the holder of which is required to be elected by separate school electors shall be signed by separate school electors only. 1972, c. 95, s. 34 (4); 1974, c. 32, s. 20 (3).

Separate
nomination
papers

(5) Each person to be nominated for election to an office shall be nominated by a separate nomination paper, but an elector may sign more than one nomination paper for the same person and the nomination papers of more than one person. 1972, c. 95, s. 34 (5), *amended*.

Clerk
to keep
nomination
paper

(6) After a nomination paper is filed with the clerk it shall remain in the possession of the clerk.

Onus on
person
nominated

(7) The onus is on the person nominated for election to an office to file a *bona fide* nomination paper. 1972, c. 95, s. 34 (6, 7).

Endorsation
by clerk

37.—(1) Where a nomination paper is filed in the office of a clerk, the clerk or his assistant returning officer shall endorse upon it the date and time of its filing. 1972, c. 95, s. 35 (1).

Certificate
of clerk

(2) Where a nomination paper is filed in the office of a clerk prior to nomination day, the paper shall forthwith be examined by the clerk and, if he is satisfied that the requisite number of the nominators whose signatures appear on the nomination paper are electors entitled to vote for the office, he shall so certify in writing. 1972, c. 95, s. 35 (2); 1974, c. 32, s. 21 (1).

Posting

(3) When the nomination papers have been certified by the clerk he shall cause the name and address of each candidate nominated and the office for which the candidate is nominated to be posted up in his office or other conspicuous place open to inspection by the public. 1972, c. 95, s. 35 (3), *amended*.

Where
filed on
nomination
day

(4) Where a nomination paper is filed in the office of a clerk on nomination day,

- (a) the clerk shall accept the nomination paper and cause the name of the person nominated to be posted up in accordance with subsection 3;
- (b) if, on examination of the nomination paper prior to 4 o'clock in the afternoon on the day following nomination day, it appears to the clerk that the requisite number of nominators whose signatures appear on the nomination paper are not electors entitled to vote for the office, he shall reject the nomination and give notice of the rejection im-

mediately by registered mail to the person nominated and all candidates for that office, but if he is satisfied that the nominators meet such requirements, he shall so certify in writing. 1972, c. 95, s. 35 (4); 1974, c. 32, s. 21 (2), *amended*.

(5) Certification by the clerk in accordance with subsection 2 or 4 with respect to a nomination paper shall be conclusive evidence of the facts certified. 1972, c. 95, s. 35 (5). 2 Certification by clerk

(6) The clerk shall establish and maintain in his office a list setting out the name and residence of every candidate whose nomination has been certified under this section for the respective offices for which persons may be nominated in the order of certification and copies of this list shall be prominently displayed in one or more locations and the list shall be completed no later than 4 o'clock in the afternoon of the day following nomination day. 1972, c. 95, s. 35 (6); 1974, c. 32, s. 21 (3), *amended*. List of candidates

DEATH OF A CANDIDATE

38. If as a result of a candidate nominated for election to an office dying before the close of the poll for the election, Election on death of candidate

- (a) a person would be elected by acclamation to such office, the election to such office is void and a new election shall be held to fill such office; or
- (b) no person would be elected by acclamation to such office, the name of the deceased candidate shall be omitted from the ballots or if the ballots have already been printed, the clerk shall cause notice of the death of the candidate to be posted up in a conspicuous place in every polling place and the election shall be proceeded with as if the deceased candidate had not been nominated. 1972, c. 95, s. 36.

WITHDRAWAL OF NOMINATIONS

39.—(1) A person nominated as a candidate in an election may withdraw his nomination by instrument in writing, verified by his affidavit and delivered to the clerk before 5 o'clock in the afternoon of the day following nomination day. Withdrawal of nomination

(2) Where a person has been nominated for more than one office, he may withdraw in respect of one or more offices for which he is nominated by filing his withdrawal in writing with the clerk in his office before 5 o'clock in the afternoon of the day following nomination day and in default he shall be Where nominated in more than one office

deemed to be nominated for the office for which he was first nominated and to have withdrawn his nomination for any other office. 1972, c. 95, s. 37.

ACCLAMATIONS

Acclamation **40.—(1)** If no more candidates are nominated for any office than the number to be elected, the clerk shall forthwith after 5 o'clock on the afternoon of the day following nomination day declare that candidate or those candidates duly elected.

Idem (2) If more candidates are nominated for an office than the number to be elected but one or more candidates withdraws his nomination so that the number remaining is no more than the number required to be elected, the clerk shall forthwith after 5 o'clock on the afternoon of the day following nomination day declare the remaining candidate or candidates to be duly elected.

Vacancy (3) If the number of candidates declared to be elected to an office under subsection 1 or 2 is less than the number to be elected to such office so that there is a vacancy, a new election shall be held to fill the vacancy.

Where quorum not elected (4) Where in any election the total number of members of the council of a municipality or of a local board, as the case may be, declared elected under this section and those elected as a result of the poll in the election is less than a quorum of the council or of the local board, the council or local board in office for the preceding year shall continue in office until a new election under subsection 3 is held and the number of members of the council or local board equals or exceeds the quorum. 1972, c. 95, s. 38.

NOTICE OF POLL

Poll required **41.—(1)** Where more candidates are nominated for election to an office than the number required to fill that office, the clerk shall hold a poll to elect the holder of that office. 1972, c. 95, s. 39 (1).

Notice of poll (2) Notice of the time for the holding of the poll in an election, including the advance poll, and notice of the last day for making application to the clerk for a certificate to vote by proxy, shall be given by the clerk forthwith after it has been determined that a poll is required, by posting the notice in at least two conspicuous places in the municipality, and, where there is a newspaper having general circulation in the municipality, by publishing the notice in such

newspaper. 1972, c. 95, s. 39 (2); 1974, c. 32, s. 22, *amended*.

VOTING BY BALLOT

42.—(1) Where a poll is held in an election, the votes shall be given by ballot. 1972, c. 95, s. 40 (1); 1974, c. 32, s. 23 (1). Voting by ballot

(2) In place of using ballot papers under this Act, the council of a municipality may, by by-law passed on or before the 1st day of April in an election year, authorize the use at elections of voting machines, voting recorders or other voting devices, and a copy of any such by-law shall be forwarded by the clerk of the municipality to the Minister forthwith after it is passed. 1974, c. 32, s. 23 (2), *part, amended*. Voting machines, etc.

(3) A by-law passed under subsection 2 or a predecessor thereof shall remain in force until repealed by the council of the municipality, but no such repealing by-law shall take effect for the purposes of the election next following its passage unless the repealing by-law is passed on or before the first day of April in the year in which the election is held. *New*. Repealing by-law

(4) Where a municipality authorizes the use of voting machines, voting recorders or other voting devices, the Minister shall, by order, provide for all procedures which may be necessary to implement the use of such machines, recorders or devices and the municipality shall comply with the provisions of the order. 1974, c. 32, s. 23 (2), *part*. Minister's order

PREPARATION AND FORM OF BALLOT

43.—(1) A clerk who is required to hold a poll under section 41 shall prepare and cause to be printed a sufficient number of ballots in the prescribed form for use in the election. Ballots

(2) The name of a person shall not be included in a ballot as a candidate for office unless his nomination as a candidate for such office has been certified by the clerk under section 37. 1972, c. 95, s. 41 (1, 2). Nomination of candidate must be certified

(3) Subject to subsection 5, the names of the candidates shall be shown on a ballot in order of their surnames alphabetically arranged, with given names preceding the surnames, and with the surnames in bold type. 1972, c. 95, s. 41 (3), *amended*. Order of names

(4) Where there are two or more candidates for election to an office whose given and surnames are identical or so nearly Where addresses to be shown

identical as to create the possibility of confusion, the address of all candidates for election to such office shall be shown on the face of the ballot for such office immediately under their names and in sufficient detail as to identify each candidate. 1972, c. 95, s. 41 (4), *amended*.

Nicknames
and titles

(5) Except as provided in subsection 4, no identification such as a title, honour, decoration or degree shall be included with any candidate's name on a ballot to be used in an election, but a name commonly called a nickname or any other name by which a candidate is commonly known may be used on the ballot as the name or part of the name of the candidate.

Space for
indicating
vote

(6) There shall appear on the ballot to the right of each candidate's name a circle or a circular space suitable for the marking of the ballot. 1972, c. 95, s. 41 (5, 6).

Ballots
for same
office to
be alike

(7) All ballots for election to the same office shall be of the same description and as nearly alike as possible, and the names, and the addresses if given, of the candidates, the circle or circular space, the instructions referred to in subsection 8, and any lines on the ballot shall be in one colour and the remainder of the face of the ballot shall be another colour, but different colours may be used for ballots to be used for election to different offices. 1974, c. 32, s. 25, *part, amended*.

Number of
candidates
and name
of office

(8) A ballot shall contain instructions as to the number of candidates for which an elector may vote and the name of the office for which the election is being held. 1974, c. 32, s. 25, *part, amended*.

Ballots re
questions

(9) The ballot papers for voting to obtain the assent or the opinion of electors on any by-law or question shall be in the prescribed form. 1972, c. 95, s. 41 (9).

Wards in
municipality

44.—(1) For an election in a municipality in which the members of council are elected by wards, there shall be prepared one set of ballots for all the polling subdivisions containing the names of the candidates for the office of mayor, another set for all the polling subdivisions containing the names of the candidates for the office of reeve, or reeve and deputy reeve, and another set for each ward containing the names of the candidates for the office of alderman or councillor for the ward.

General
vote in
city or town

(2) For an election in a city or town in which the members of council are elected by general vote, there shall be prepared for all the polling subdivisions one set of ballots containing the names of the candidates for the offices of mayor, or mayor and

reeve, or mayor, reeve and deputy reeve, and another set containing the names of the candidates for the office of alderman or councillor.

(3) For an election in a township that constitutes a borough Borough in Metro. Toronto within The Municipality of Metropolitan Toronto, one set of ballots shall be prepared for all the polling subdivisions containing the names of the candidates for the office of mayor, another set of ballots for all the polling subdivisions containing the names of the candidates for the office of controller and another set for each ward containing the names of the candidates for the office of alderman.

(4) For an election in a village or township there shall be Village or township prepared one set of ballots containing the names of the candidates for the office of reeve or of reeve and deputy reeve, and for the office of councillor.

(5) The council of a town may by by-law provide that the By-law providing for separate sets ballots for an election to the offices of mayor, reeve and deputy reeve shall be prepared in separate sets and, the council of a village or township may, by by-law provide that the ballots for an election to the offices of reeve, deputy reeve and councillor shall be in separate sets. 1972, c. 95, s. 42 (1-5).

(6) A by-law for the purposes mentioned in subsection 5 When to be passed shall be passed not later in the election year than the first day of October and remains in force until repealed, and while in force the prescribed ballots shall be prepared accordingly. 1972, c. 95, s. 42 (6), *amended*.

(7) There shall also be separate sets of ballots, Separate sets for controller, local board, by-laws, etc.

(a) containing the names of the candidates for the office of,

(i) controller,

(ii) member of a local board,

(iii) trustee of a police village,

(iv) member of the council of a regional municipality, or

(v) member of the council of both an area municipality and a regional municipality;

(b) for obtaining the assent of the electors on any by-law or the opinion of the electors on any question re-

quired or authorized to be submitted to them at an election. 1972, c. 95, s. 42 (7); 1974, c. 32, s. 26.

More than
one by-law,
etc.

(8) Where more than one by-law or question is to be submitted to the electors at one election, all of such by-laws or questions may be placed on one ballot paper. 1972, c. 95, s. 42 (8).

Composite
ballots

45.—(1) In place of using separate ballots under this Act, the council of a municipality may, by by-law passed prior to the first day of October in an election year, authorize the use at a municipal election of composite ballots in such form subject to subsections 1 to 8 of section 43, as the by-law prescribes. 1972, c. 95, s. 43 (1); 1974, c. 32, s. 27, *amended*.

Contents

(2) A composite ballot may contain,

- (a) the names of candidates for the offices of member of council, member of a school board, member of a public utility commission or member of any other board, commission or body the members of which are required to be elected by the electors of the municipality or for any one or more of such offices; and
- (b) any by-law or question authorized or required by law to be submitted to the electors for their assent or opinion.

Not to be
given to
elector not
entitled to
vote for
office on
ballot

(3) No elector shall be given a composite ballot containing the names of candidates for an office or containing a question or by-law for which he is not entitled to vote.

By-law in
force until
repealed

(4) A by-law passed under this section remains in force from year to year until repealed. 1972, c. 95, s. 43 (2-4).

POLLING PLACES

Polling
place

46.—(1) Subject to section 47, the clerk shall provide for each election at least one polling place for each polling subdivision in a place that is most central or most convenient for the electors and is furnished with light and heat and such other accommodation and furniture as may be required, but the polling place may be provided outside the limits of the polling subdivision.

Idem

(2) Every polling place for an election in a municipality shall be situate in the municipality, except that where a polling subdivision in a township adjoins an urban municipality, the polling place for the polling subdivision may be within the limits of the urban municipality. 1972, c. 95, s. 44 (1, 2).

(3) Every polling place shall be furnished with compartments in which electors may mark their ballots without other persons being able to see how they are marked and it is the duty of the clerk and the deputy returning officer respectively to ensure that a sufficient number of compartments is provided at each polling place. 1972, c. 95, s. 44 (3), *amended*. Compartments

(4) The clerk may unite two or more adjoining polling subdivisions and provide one polling place for the united subdivisions. 1972, c. 95, s. 44 (4). United subdivisions

(5) The clerk may provide such additional polling places in any polling subdivisions as are required having regard to the extent of the subdivision, the remoteness of any number of its electors from the polling place and number of voters that may conveniently vote at one polling place. 1972, c. 95, s. 44 (5), *amended*. Additional places

(6) Where there are two or more polling places in a polling subdivision, each polling place shall be designated by the numbers of the lots and concessions or the numbers and names of the streets at which the electors reside or that designate the properties in respect of which the electors are qualified to vote therein, or by the initial letters of the surnames of the electors who are qualified to vote therein, that is to say, A to M and N to Z, or as the case may be, and an elector is entitled to vote at the appropriate polling place designated accordingly. Designation of places

(7) In municipalities having more than 5,000 electors, the clerk shall mail or cause to be delivered to each dwelling unit in the municipality a notice advising the elector or electors therein of the location of the polling place in which that elector or those electors is or are to vote. 1972, c. 95, s. 44 (6, 7). Notice of location of polling place

47.—(1) Where in a municipality there is situate a hospital or other institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or the armed forces of any member of the Commonwealth, or who are blind or deaf, a Workmen's Compensation hospital or a home for the aged, a polling place shall be provided in such institution or upon the premises, and may be provided in a nursing home or other institution of twenty beds or more in which chronically ill or infirm persons reside, and for the purpose of polling, the institution shall be deemed to be a polling place, and every person resident in the institution who is entered in the polling list is entitled to vote at such polling place only. 1974, c. 32, s. 28 (1). Polling places in institutions

Attendance
upon patients
to take
vote

(2) Where a patient of such a hospital or other institution is bed-ridden or is unable to walk, it is lawful for the deputy returning officer and poll clerk with the candidates or their scrutineers to attend upon such person for the purpose of receiving his ballot, but no candidate or scrutineer shall be present where the ballot of any such voter is marked under section 63. 1972, c. 95, s. 45 (2).

SUPPLIES AND EQUIPMENT FOR POLLING PLACES

Supplies for
polling place

48.—(1) The clerk shall, before polling day, cause to be delivered to every deputy returning officer in his municipality,

- (a) a ballot box for his polling place;
- (b) a sufficient number of ballots to supply the electors in the polling list of his polling place;
- (c) a sufficient number of the prescribed directions for the guidance of electors for the purposes of the polling place;
- (d) the polling list and a blank poll book for the polling place;
- (e) all materials necessary for electors to mark their ballots; and
- (f) such other materials as are prescribed. 1972, c. 95, s. 46 (1), *amended*.

Ballot box

(2) A ballot box shall be made of durable material, provided with lock and key, and so constructed that the ballots can be deposited therein and cannot be withdrawn without unlocking the box.

Clerk to
certify
number of
ballots

(3) When delivering the ballots for a polling place to a deputy returning officer the clerk shall certify the number of ballots so delivered and upon receiving them the deputy returning officer shall make a count of the ballots and forward the prescribed receipt therefor to the clerk, and shall keep the certificate for return to the clerk with the other documents required to be returned to him under section 78.

Directions
to be
placarded

(4) Every deputy returning officer before opening the poll, or immediately after he has received the printed directions from the clerk if they were not received before opening the poll, shall cause them to be placarded outside the polling place and in every compartment of the polling place, and shall see that they remain so placarded until the close of the polling. 1972, c. 95, s. 46 (2-4).

WHERE AND HOW OFTEN ELECTORS MAY VOTE

49. An elector whose name appears in the polling list for a polling subdivision or who presents a certificate to vote there under section 33, 50 or 56, is entitled to vote in an election in such subdivision in accordance with the following rules: Number of votes that may be given by an elector

1. He is entitled to vote once only for one candidate for mayor, reeve or deputy reeve.
2. He is entitled to vote for as many candidates for controller as there are controllers to be elected but once only for each candidate.
3. Where the election of aldermen, councillors, trustees or members of local boards is by general vote, he is entitled to vote for as many candidates for such offices as there are candidates to be elected but once only for each candidate.
4. Where the aldermen, councillors, trustees or members of local boards are elected by wards, he is entitled to vote,
 - i. if resident in the municipality, in the polling subdivision in which he resides; or
 - ii. if not resident in the municipality, in the polling subdivision in which his name appears on the polling list,
 for as many candidates for such offices as there are candidates to be elected for the ward but once only for each candidate.
5. Where the election is to the office of member of a school board to be elected by public school electors in a municipality or a part thereof, or in a combination of municipalities, in which the polling subdivision is located, a public school elector is entitled to as many votes as there are members to be elected by the public school electors in such municipality or part, or combination of municipalities, as the case may be, but may not give more than one vote to any one candidate.
6. Where the election is to the office of member of a school board to be elected by separate school electors in a municipality or in a part thereof, or in a combination of municipalities, in which the polling subdivision is located, a separate school elector is entitled

to as many votes as there are members to be elected by the separate school electors in such municipality or part, or combination of municipalities, as the case may be, but may not give more than one vote to any one candidate.

7. An elector who is entitled to vote in respect of any by-law or question authorized or required by law to be submitted for the assent or opinion of the electors is entitled to vote once only with respect to such by-law or question. 1972, c. 95, s. 47.

Voting of
D.R.O. and
poll clerk
where
employed

50.—(1) Subject to subsection 2, at the request of a person whose name is entered on the polling list for a polling place in a municipality who has been appointed a deputy returning officer or poll clerk at another polling place, the clerk of the municipality shall give him a certificate that he is entitled to vote at the polling place at which he is stationed during the polling day.

Where
municipality
divided into
wards

(2) No certificate shall be issued under this section entitling an elector in a municipality that is divided into wards to vote at a polling subdivision in a ward different from the ward in which the polling place at which the elector is otherwise entitled to vote is situated.

When
certificate
may be
given

(3) The clerk shall not give a certificate under this section until he has ascertained by reference to the polling list or to a certificate under section 33 that the applicant is entitled to vote, and after giving the certificate he shall forthwith give notice in writing thereof to the deputy returning officer for the polling place at which the applicant is by the polling list or certificate under section 33 to be entitled to vote, and the person to whom the certificate has been given is not thereafter entitled to vote at such polling place.

Certificate

(4) The certificate shall designate the polling place at which the person is to be permitted to vote.

List of
certificates

(5) The clerk shall keep a list in which he shall enter before he delivers a certificate under this section,

- (a) the name and residence of the person to whom he gives the certificate;
- (b) the polling place at which the person is authorized to vote under the certificate;
- (c) the polling place at which the person appears by the polling list to be entitled to vote;

- (d) whether the certificate is granted to such person as deputy returning officer or poll clerk; and
- (e) if a certificate is refused, the name of the person applying for the certificate with the grounds of refusal,

and the list shall be open to inspection by any candidate scrutineer or elector. 1972, c. 95, s. 48.

51.—(1) A person who produces a certificate given to him under section 50 is entitled to vote at the polling place designated therein, but the certificate does not entitle him to vote there unless he has been actually engaged there as a deputy returning officer or poll clerk during polling day. Certificate entitles person to vote

(2) The deputy returning officer shall enter or cause to be entered in the column for remarks in the poll book opposite the name and residence of the person voting under the authority of a certificate, the words "Voted under Certificate". Entry in poll book

(3) A person voting under the authority of a certificate shall deliver it to the deputy returning officer before receiving his ballot. Certificate to be given to D.R.O.

(4) The deputy returning officer shall enclose all certificates to which this section applies in one envelope. 1972, c. 95, s. 49. To be kept in envelope

PROCEDURE AT POLL

52. Every polling place shall be open for the purpose of taking the poll at every election from 9 o'clock in the forenoon until 8 o'clock in the afternoon of polling day. 1972, c. 95, s. 50, *amended*. Hours poll to be open

53.—(1) A deputy returning officer shall attend at the polling place for which he was appointed at least fifteen minutes before the hour fixed for opening the poll. When D.R.O. to attend poll

(2) During the period of fifteen minutes before the opening of the poll, the scrutineers who are entitled to be present in a polling place during polling hours are entitled to inspect the ballots and all other papers, forms and documents relating to the poll. 1972, c. 95, s. 51. Inspection of ballots before opening of poll

54. A deputy returning officer shall, immediately before opening the poll at his polling place, show the ballot box to such persons as are present in the polling place, so that they may see if it is empty, and he shall then lock the box and place his seal upon it in such a manner as to prevent it being Inspection, sealing of ballot box

opened without breaking the seal, and he shall keep the box on a desk, counter or table or otherwise so that it is raised above the floor in full view of all present, and shall keep the box so locked and sealed until the box is required to be opened for the purpose of counting the votes under section 71. 1972, c. 95, s. 52.

Duties of
D.R.O. on
tender of
vote

55.—(1) Where a person tenders his vote, the deputy returning officer shall proceed as follows:

1. He shall ascertain that the name of such person or a name apparently intended for it is entered in the polling list for the polling subdivision or that such person is entitled to vote under a certificate issued by the clerk pursuant to section 33 or 50.
2. He shall record or cause to be recorded by the poll clerk, in the proper columns of the poll book, the name and residence of such person.
3. If the deputy returning officer is satisfied that such person is the person designated in the polling list or in a certificate mentioned in paragraph 1 and is otherwise entitled to vote and if no candidate or scrutineer objects to voting by such person, the deputy returning officer shall put his initials on the back of a ballot paper, so placed that when the ballot is folded they can be seen without opening it and shall deliver the ballot paper to such person.
4. If voting by such person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered in the poll book, by writing opposite the name of such person in the proper column the words "*Objected to*" and the name of the candidate by or on whose behalf the objection was made and the deputy returning officer shall require such person to take the prescribed oath.
5. If the deputy returning officer is not satisfied that such person is the person designated in the polling list or in a certificate mentioned in paragraph 1 and is otherwise entitled to vote, although no candidate or scrutineer has objected, he may require such person to take the prescribed oath.
6. If such a person having been required to take the oath refuses to do so, the deputy returning officer shall enter or cause it to be entered opposite the name of such person in the proper column of the poll

book the words "*Refused to be sworn*" or "*Refused to affirm*" according to the fact and a ballot paper shall not be delivered to such person.

7. If such person takes the oath, the deputy returning officer shall enter or cause to be entered opposite such person's name in the proper column of the poll book the word "*Sworn*" or "*Affirmed*" according to the fact, shall put his initials on the back of a ballot paper, so placed that when the ballot is folded they can be seen without opening it, and shall deliver the ballot paper to such person.
8. The deputy returning officer may, and upon request shall, either personally or through the poll clerk, explain to the elector as concisely as possible the mode of voting.

(2) A person who on polling day is a prisoner in a penal or reform institution, or a patient in a mental hospital, or who has been transferred from a mental hospital to a home for special care as mentally incompetent is disqualified from voting at any election and no ballot shall be furnished to such a person.

Disqualification of prisoners, mentally ill, etc.

(3) Every elector qualified to vote at a polling place who is inside the polling place at the time fixed for closing the poll is entitled to vote. 1972, c. 95, s. 53.

Elector in polling place at closing

56.—(1) If a person representing himself to be an elector applies to a deputy returning officer at a polling place for a ballot and his name does not appear in the polling list or in a certificate issued under section 33 or 50 as entitled to vote at the polling place, he is entitled to have his name entered in such polling list and to receive a ballot and to vote if he takes a declaration in the prescribed form and otherwise establishes his identity to the satisfaction of the deputy returning officer.

Entry of name in polling list by D.R.O.

(2) The deputy returning officer shall enter or cause to be entered in the polling list and on the poll book the name of the elector and shall enter in the poll book a note of his having voted after being sworn as provided in subsection 1. 1972, c. 95, s. 54.

Idem

(3) The deputy returning officer shall furnish a copy of each such declaration to the clerk who shall, in turn, furnish it to the assessment commissioner before the first Monday in December. 1974, c. 32, s. 29, *amended*.

Copy to clerk and assessment commissioner

Where it
appears
person voted
in place
of elector,
etc.

57.—(1) Where an elector entitled to vote at a polling place applies for a ballot paper and it appears that another person has voted as such elector or that an entry has been made in the polling list in error that such elector has polled his vote, if such person takes an oath in the prescribed form and otherwise establishes his identity to the satisfaction of the deputy returning officer he is entitled to receive a ballot paper.

Entry in
poll book

(2) The deputy returning officer shall enter or cause to be entered in the poll book opposite the name of the elector who votes under this section a note of his having voted on a second ballot or of an entry having been made in the polling list in error that he has polled his vote, as the case may be. 1972, c. 95, s. 55.

Inquiry

58. No inquiry shall be made of an elector who is required to take the oath under section 55 or 57 except with respect to the matters required to be stated in the oath or to ascertain if he is the person intended to be designated in the polling list. 1972, c. 95, s. 56 (2); 1974, c. 32, s. 30 (2).

Procedure
on receipt
of ballot

59. Upon delivery to him of a ballot paper by a deputy returning officer, the person receiving it shall,

- (a) forthwith proceed into the compartment provided for the purpose and shall then and there mark his ballot paper with a cross or other mark with a pen or pencil within the circle or circular space to the right of the name of a candidate for whom he intends to vote;
- (b) then fold the ballot paper so as to conceal the names of the candidates and the marks upon the face of it and so as to expose the initials of the deputy returning officer;
- (c) then leave the compartment without delay, and without showing the face of the ballot paper to anyone, or so displaying it as to make known how he has marked it; and
- (d) then deliver the ballot paper so folded to the deputy returning officer. 1972, c. 95, s. 57.

Duty of
D.R.O. on
receipt of
ballot

60.—(1) Upon delivery of a ballot paper to him by an elector, the deputy returning officer, without unfolding the ballot paper, or in any way disclosing the names of the candidates or the marks made by the elector, shall verify his own initials, and at once deposit the ballot paper in the ballot box in the presence of all persons entitled to be present and then present in the polling place, and the elector shall forthwith leave the polling place.

(2) A person whose ballot has been placed in the ballot box by the deputy returning officer shall be deemed to have voted. Person deemed to have voted

(3) The deputy returning officer or the poll clerk shall place his initials in the appropriate column of the poll book opposite the name of every person who has voted for candidates for the office named in that column. 1972, c. 95, s. 58. Entry in poll book

61.—(1) A person who has received a ballot from a deputy returning officer shall not take it out of the polling place, and a person who receives a ballot and leaves the polling place without returning it to the deputy returning officer, or returns his ballot declining to vote, forfeits his right to vote, and the deputy returning officer, shall make an entry in the poll book in the column for remarks to the effect that the person received a ballot but took it out of the polling place, or returned it declining to vote, as the case may be, and in the latter case the deputy returning officer shall immediately write the word “*Declined*” upon the ballot and preserve it to be returned to the clerk. Person not to take ballot from polling place

(2) An elector who has inadvertently dealt with his ballot in such a manner that it cannot be conveniently used, upon returning it to the deputy returning officer, is entitled to obtain another ballot, and the deputy returning officer shall immediately write the word “*Cancelled*” upon the first-mentioned ballot and preserve it to be returned to the clerk. 1972, c. 95, s. 59. Ballot accidentally spoiled

62. Subject to section 63, while an elector is in a compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment or to be in a position from which he can see how the elector marks his ballot paper. 1972, c. 95, s. 60. No other person in compartment while elector marking ballot

63.—(1) On the application of any elector who is unable to read or is incapacitated by blindness or other physical cause from voting in accordance with the other provisions of this Act, the deputy returning officer shall require the elector making the application to take an oath of his incapacity to vote without assistance, and shall thereafter assist the elector by marking his ballot in the manner directed by the elector in the presence of the poll clerk and of no other person and place the ballot in the ballot box. Voter incapacitated by blindness, etc.

(2) The deputy returning officer shall either deal with a blind elector in the manner provided in subsection 1 or, at the request of any blind elector who has taken the prescribed oath and is accompanied by a friend, shall permit the friend Blind elector's ballot marked by friend

to accompany the blind elector into the voting compartment and mark the elector's ballot for him.

Oath of friend

(3) Any friend who is permitted to mark the ballot of a blind elector under subsection 2 shall first be required to take the prescribed oath that he will keep secret the manner in which the blind elector voted.

May act as friend only once

(4) No person shall be allowed to act as the friend of more than one blind elector at any polling place other than a polling place established under section 47.

Entry in poll book

(5) The deputy returning officer shall enter in the column for remarks in the poll book opposite the elector's name the reason why the ballot was marked by him or by a friend of the elector. 1972, c. 95, s. 61.

Voter who cannot understand English

64. Where the deputy returning officer does not understand the language of the elector, an interpreter provided by the elector may be sworn in the prescribed form to translate the necessary oaths as well as any lawful questions necessarily put to the elector and his answers, but in the event of inability to secure an interpreter, the elector shall be refused a ballot. 1972, c. 95, s. 62.

Who may remain in polling place

65.—(1) The returning officer, the assistant returning officer, the deputy returning officer, the poll clerk, the election assistant, the constable or constables, any candidate or, in his absence, his scrutineer, any scrutineer appointed by the council in relation to any by-law or question, and no others shall be permitted to remain in the polling place during the time the poll is open or to be in the polling place at the counting of the votes. 1972, c. 95, s. 63; 1974, c. 32, s. 31.

No campaign literature in polling place

(2) No campaign material or literature of any nature whatsoever of any candidate in the election shall be permitted within the polling place. *New.*

ADVANCE POLLS

Advance poll

66.—(1) The clerk shall hold an advance poll in accordance with this section on the Saturday and Monday nine days and seven days respectively before polling day for the purpose of receiving votes of electors who expect to be unable to vote on polling day in the polling subdivisions for which their names appear on the polling lists or who are entitled to vote either under a certificate issued by the clerk under section 33 or who become entitled to vote under section 56. 1974, c. 32, s. 32 (1), *part, amended.*

(2) The council of a municipality may by by-law passed before nomination day provide for the holding by the clerk of additional advance polls for the same purposes as provided in subsection 1. 1974, c. 32, s. 32 (1), *part*. Additional advance poll

(3) The advance poll shall be open from 9 o'clock in the forenoon until 8 o'clock in the afternoon on each day it is held and polling shall be held so far as possible in the same manner as polling at a regular election. 1972, c. 95, s. 64 (2); 1974, c. 32, s. 32 (2), *amended*. When poll to be open

(4) The clerk shall provide as many polling places for an advance poll as he considers necessary and shall appoint a deputy returning officer and poll clerk for each such polling place. 1972, c. 95, s. 64 (3). Polling places

(5) Forthwith after the close of the advance poll on each day it is held, the deputy returning officer shall make up and deliver to the clerk a list of the names of all persons who have voted showing in each case the number of the polling subdivision in which the elector is entered in the polling list and the clerk shall, at the request of any candidate, furnish him with a copy of such list. List of persons voting

(6) Upon receiving the list mentioned in subsection 5, the clerk shall, Duties of clerk on receiving list

- (a) make an entry in the polling list to be supplied to each deputy returning officer on polling day opposite the name of each elector whose name appears in such list and whose vote has been received at an advance poll, showing that such elector has voted; or
- (b) make a certificate in the prescribed form for each polling subdivision, showing the name and address of each elector listed in the polling list for such polling subdivision who has voted at an advance poll, and shall furnish such certificate before the opening of the poll on polling day to the deputy returning officer of the polling subdivision, and the deputy returning officer shall before opening the poll make an entry in the polling list supplied to him, opposite the name of each elector whose name appears on the certificate, showing that such elector has voted. 1972, c. 95, s. 64 (5, 6).

(7) Forthwith after the close of the advance poll on each day it is held the deputy returning officer and any candidate or scrutineer present who desires to do so shall affix his seal to the ballot box in such a manner that it cannot be opened or any Sealing of box

ballots be deposited in it without breaking the seals and the deputy returning officer shall forthwith deliver it, along with all other election documents used at the poll, personally to the clerk for safe keeping. 1972, c. 95, s. 64 (7), *amended*.

Opening of
ballot boxes
for advance
poll

(8) On the regular polling day for an election, after the close of polling, the deputy returning officer shall, in the presence of such candidates for office at the election and their scrutineers as are present at the hour fixed for the closing of the poll, open the ballot boxes for the advance poll, count the votes and perform all other duties required of deputy returning officers by this Act. 1972, c. 95, s. 64 (8).

PROXY VOTING

Who may
vote by
proxy

67.—(1) Any person whose name is entered in the polling list for a polling subdivision or who has obtained a certificate under section 33 entitling him to vote and who is,

- (a) a person other than one described in section 47 and who is certified by a legally qualified medical practitioner, by certificate filed with the clerk, to be physically incapable of attending a polling place;
- (b) a person absent from his regular residence by reason of attending an educational institution and who is entered in the list for the polling subdivision in which he normally resides and who expects by reason of such absence to be unable to vote at the advance poll or on polling day; or
- (c) a person who expects to be absent from his polling subdivision during the election period including the advance poll and polling day by reason of his being engaged for hire or reward in the business of transportation by railway, air, water or motor vehicle,

may vote by proxy in that polling subdivision. 1972, c. 95, s. 65 (1); 1974, c. 32, s. 33 (1).

Who may be
proxy

(2) Any person who is entitled to vote by proxy pursuant to subsection 1 may appoint in writing in the prescribed form as his voting proxy any other person who is eligible as an elector in the municipality. 1972, c. 95, s. 65 (2), *amended*.

May be
proxy once
only

(3) A voting proxy may not act as a voting proxy for more than one person voting by proxy except where the person voting by proxy is the parent, grandparent, child, grandchild, brother, sister, husband or wife of the voting

proxy, in which case a voting proxy may act for more than one such person voting by proxy. 1972, c. 95, s. 65 (3); 1974, c. 32, s. 33 (2).

(4) An appointment of a person as a voting proxy is not valid unless it is made after nomination day and does not remain in force after polling day. 1972, c. 95, s. 65 (4). Term of appointment

(5) A person who has been appointed a voting proxy may apply to the clerk not later than 5 o'clock in the afternoon of the Friday preceding polling day to receive a certificate to vote by proxy for the polling subdivision in which the person appointing the voting proxy is entitled to vote. 1972, c. 95, s. 65 (5), *amended*. Application for certificate to vote by proxy

(6) The clerk may take evidence on oath as to the right of the person appointing the voting proxy to vote in the polling subdivision upon the list for which his name is entered and as to the qualification of the voting proxy, and, if he finds that the person appointing the voting proxy is duly qualified and that the voting proxy is authorized to act for the person appointing him, he shall give a certificate in prescribed form across the face of the appointment of the voting proxy to that effect. 1972, c. 95, s. 65 (6); 1974, c. 32, s. 33 (3), *amended*. When certificate to be given

(7) Not more than one voting proxy may be appointed on behalf of any person at any election. Not more than one proxy

(8) A ballot shall not be delivered to a person who claims to vote as a voting proxy unless he produces his appointment as a voting proxy to the deputy returning officer with the certificate of the clerk thereon as provided in subsection 6 and takes the prescribed oath. Oath on voting

(9) Where a voting proxy has voted, the deputy returning officer shall record in the poll book the fact that the person appointing the voting proxy voted by proxy and the name of the voting proxy, and shall file the appointment of the voting proxy and the certificate of his appointment given by the clerk with the election papers and return them to the clerk in the envelope provided for that purpose. Record of voting proxy

(10) A person who has been appointed as a voting proxy is entitled to vote in his own right in the municipality notwithstanding that he has voted as a voting proxy. 1972, c. 95, s. 65 (7-10). Proxy may vote in own right

KEEPING OF PEACE: EMERGENCY SITUATIONS

Assistance of
constables

68. A clerk or a deputy returning officer may require the assistance of constables and other persons to aid him in maintaining peace and order at the election and may swear in as many constables as he considers necessary. 1972, c. 95, s. 66.

Declaration
of emergency
by clerk

69.—(1) If by reason of the occurrence of any circumstances in the municipality, that, in the opinion of the clerk are of such a nature as to prevent or delay the opening of any polling place or cause the discontinuance of polling at any polling place, the clerk may declare an emergency situation to be in effect and such emergency situation shall continue until the clerk otherwise declares.

Arrange-
ments by
clerk

(2) Where an emergency situation is declared under subsection 1, the clerk shall make such arrangements as he considers advisable for the conduct of the poll, the safe-keeping of the ballot boxes and all election documents and the counting of the votes.

Not open
to question

(3) The arrangements made by the clerk under subsection 2, in good faith, shall not be open to question, or be quashed, set aside or declared invalid on account of their unreasonableness or supposed unreasonableness. *New.*

COUNTING THE VOTES

Duties of
D.R.O. after
close of poll

70. Immediately after the close of the poll, the deputy returning officer at each polling place shall,

- (a) place all the cancelled, declined and unused ballots in separate sealed envelopes;
- (b) count the number of electors whose names appear by the polling book to have voted and make an entry in the book on the line immediately below the name of the elector who voted last as follows:—"The number of electors who voted at this election in this polling place is (stating the number)" and sign his name thereto. 1972, c. 95, s. 68.

Counting of
votes

71.—(1) After compliance with section 70, the deputy returning officer shall, in the presence and in full view of the

persons entitled to be present, open the ballot box for the polling place and proceed to count the numbers of votes for each candidate, giving full opportunity to those present to examine each ballot.

(2) In counting the votes, the deputy returning officer shall ^{Rejection of ballots} reject all ballots,

- (a) that have not been supplied by him;
- (b) that contain the names of candidates for one office only and in which votes have been cast for more candidates than are to be elected to the office;
- (c) that are separate ballots submitting a by-law for the assent or a question for the opinion of the electors, and votes are cast for both the affirmative and the negative on the by-law or question; or
- (d) upon which there is any writing or mark by which the elector can be identified, or that has been so torn, defaced or otherwise dealt with by the elector that he can thereby be identified,

but no word, letter, or mark written or made or omitted to be written or made by the deputy returning officer on a ballot voids it or warrants its rejection.

(3) Where a ballot contains the names of candidates for ^{Idem} more than one office and votes are cast on such ballot for more candidates for any office than are to be elected to such office, such votes are void and shall be rejected, but unless such ballot is rejected under subsection 2, the votes for any other office in respect of which the elector has not voted for more candidates than are to be elected shall be counted.

(4) Where in a composite ballot, ^{Composite ballots}

- (a) votes are cast for more candidates for any office than are to be elected to such office; or
- (b) votes are cast for both the affirmative and negative on any by-law or question,

the votes for such candidates or with regard to the by-law or question, as the case may be, are void and shall be rejected but, unless such ballot is rejected under subsection 2, the

votes for any other offices, by-law or question in respect of which votes are correctly indicated shall be counted.

Where part
of votes
rejected

(5) Where part of the votes cast in any ballot are rejected under subsection 3 or 4, the deputy returning officer shall note such fact on the back of the ballot and initial the note, and where all the votes on the ballot are rejected under either or both of such subsections, the ballot shall be treated as a rejected ballot. 1972, c. 95, s. 69.

Objection
by candidate,
etc.

72.—(1) A candidate or a scrutineer at a polling place may object to a ballot or to the counting of votes in any ballot in whole or in part on the ground that the ballot or such votes should be rejected under section 71 and the deputy returning officer at the polling place shall decide the objection, subject to review on a recount or in a proceeding questioning the validity of the election.

Objections to
be listed

(2) The deputy returning officer shall list all objections under subsection 1 to the counting of ballots or of votes therein and number such objections and shall place the number of an objection on the back of the ballot objected to and initial the number. 1972, c. 95, s. 70.

How votes
counted

73. The deputy returning officer shall count all votes cast at his polling place that are not rejected and shall keep an account of the number of votes so cast and allowed for each candidate and with respect to each by-law or question. 1972, c. 95, s. 71.

Ballots to
be placed
in separate
packets

74. Following count of the votes at his polling place, a deputy returning officer shall place in separate sealed packets,

- (a) all used ballots that have not been objected to and have been counted in whole or in part;
- (b) all used ballots that have been objected to but which have been counted in whole or in part;
- (c) all rejected ballots;
- (d) all ballots used but unmarked. 1972, c. 95, s. 72.

D.R.O. to
endorse
packets

75. The deputy returning officer shall endorse every packet of ballots made up by him under clause *a* of section 70 or section 74 so as to indicate its contents and any candidate or scrutineer present may write his name on the packet. 1972, c. 95, s. 73.

76. The poll clerk, immediately after the completion of the counting of the votes, shall take and subscribe the prescribed oath. 1972, c. 95, s. 74. Oath of poll clerk

STATEMENT AND MATERIALS RETURNED TO CLERK

77.—(1) The deputy returning officer shall make out a statement in duplicate of the number of, Statement of D.R.O.

- (a) ballots received from the clerk;
- (b) votes given for each candidate;
- (c) votes given for and against a by-law or question;
- (d) used ballots that have not been objected to and have been counted;
- (e) ballots that have been objected to in whole or in part but which have been counted;
- (f) rejected ballots;
- (g) cancelled ballots;
- (h) ballots used but unmarked;
- (i) declined ballots;
- (j) unused ballots;
- (k) electors whose ballots have been marked by the deputy returning officer under sections 47 and 63. 1972, c. 95, s. 75 (1), *amended*.

(2) One statement shall be attached to the poll book and the duplicate statement enclosed in a special packet shall be delivered to the clerk as provided herein. Statement attached to poll book

(3) The statement shall be signed by the deputy returning officer and the poll clerk and such of the candidates or their scrutineers as are present and desire to sign it. Statement signed by D.R.O., etc.

(4) The deputy returning officer shall deliver to such of the candidates or their scrutineers as are present, if requested to do so, a certificate of the number of ballots counted for each candidate, and of the rejected ballots. 1972, c. 95, s. 75 (2-4). Certificate re ballots counted and rejected

78.—(1) The deputy returning officer shall place in the ballot box the poll book, the polling list, the packets containing the ballots and all other documents or packets that served at the election, except, What to be placed in ballot box

- (a) the duplicate statement;
- (b) the oath of the poll clerk;

(c) the oath of the person, if any, chosen to deliver the ballot box to the clerk; and

(d) the copies of the declaration required to be furnished to the clerk under subsection 3 of section 56. 1972, c. 95, s. 76 (1); 1974, c. 32, s. 34.

Box to be
locked, etc.

(2) The deputy returning officer shall then lock and seal the ballot box and forthwith deliver it and the documents enumerated in subsection 1 personally to the clerk.

Oath of
D.R.O.

(3) Forthwith thereafter, the deputy returning officer shall take and subscribe the prescribed oath and shall personally deliver it or transmit it by registered mail to the clerk.

Delivery of
ballot box,
etc., to
clerk

(4) If the deputy returning officer is unable personally to deliver the ballot box and documents enumerated in subsection 1 owing to illness or other cause, he shall deliver them to the poll clerk for delivery to the clerk, or, where the poll clerk is unable to act, to some person chosen by the deputy returning officer for the purpose of delivering them to the clerk, who shall take the prescribed oath to do so and the deputy returning officer shall thereon, or on a ticket attached thereto, write the name of the person to whom the box was delivered and shall take a receipt therefor, and the poll clerk or person so chosen shall forthwith personally deliver them to the clerk and shall take before him the prescribed oath.

Right of
candidate,
etc., to be
present

(5) The candidates, or their scrutineers, are entitled to be present when the ballot box and documents for a polling place are delivered to the clerk pursuant to this section. 1972, c. 95, s. 76 (2-5).

D.R.O. not to
take box to
home, etc.

(6) Subject to section 69, a deputy returning officer, after the close of the poll, shall not under any circumstances take, or allow to be taken, the ballot box to his home, house, office or place of business, or to any house or place except the office of the clerk. 1972, c. 95, s. 76 (6), *amended*.

Clerk to add
up votes

79.—(1) The clerk, after he has received the ballot boxes and other documents referred to in section 78, shall, without opening any of the ballot boxes, cast up from the duplicate statements showing the number of votes for each candidate and for the affirmative or negative on any by-law or question at each polling place the total number of votes for each candidate and the total number of votes for the affirmative or negative on any by-law or question.

Declaration
of result

(2) After casting up the total number of votes cast at an election, the clerk shall, at the town hall or, if there is no

town hall, at the clerk's office at noon on the Thursday following the day on which the polling is held, publicly declare to be elected the candidate or candidates having the highest number of votes, and declare the result of the vote with respect to any by-law or question and he shall also post up in some conspicuous place a statement under his hand showing the number of votes for each candidate and for the affirmative or negative on the by-law or question.

(3) If for any cause, the clerk cannot, at the day and hour appointed by him for adding up the votes, ascertain the number of votes given for each candidate, or for the affirmative or negative on any by-law or question he may adjourn to a future day and hour the adding up of the votes and so on from time to time, such adjournment or adjournments not in the aggregate to exceed fourteen days. 1972, c. 95, s. 77.

Delay in
adding up
votes

80.—(1) Except as provided in this section, the clerk, upon the receipt of a ballot box, and the documents referred to in section 78, shall take every precaution for their safekeeping and for preventing any other person from having access to them, and shall immediately on receipt of the ballot box seal it with his own seal in such a way that it cannot be opened without his seal being broken, and that any other seals affixed to it are not effaced or covered.

Safekeeping
of box and
documents

(2) Where the documents specified in subsection 1 of section 78 are in error placed in the ballot box or where the duplicate statement cannot be interpreted by the clerk, he may open such ballot box or boxes in the presence of the deputy returning officer concerned and, after having recovered or ascertained the meaning of the statement, as the case may be, the box shall be resealed by the deputy returning officer in the presence of the clerk and by the clerk.

Opening of
box when
documents
placed in
box in
error

(3) If a deputy returning officer has not delivered the statement of the ballots counted by him to the clerk as required by section 78, the clerk shall after notification to the candidates or their scrutineers, who may be present, open the appropriate ballot box for the purpose of counting the votes and shall count the votes. 1972, c. 95, s. 78.

Where D.R.O.
fails to
deliver
statement

81. If a ballot box for any polling place has been destroyed or lost, or, for any other reason, is not forthcoming by the time fixed for adding up the votes, the clerk shall ascertain the cause and, if the statement of the votes cast and certificates, or any of them or copies of them, cannot be procured, the clerk shall ascertain by such evidence as he is able to obtain, the total number of votes given for each candidate at the polling place and for the affirmative or negative on any by-law or

Where ballot
box lost,
etc.

question, and may summon any deputy returning officer, poll clerk, election assistant or other person to appear before him at a time and place to be named by him, and the clerk shall notify the candidates of the intended proceedings and may examine on oath such deputy returning officer, poll clerk, election assistant or other person respecting the matter in question. 1972, c. 95, s. 79.

Equality
of votes

82.—(1) If, upon the casting up of the votes, two or more candidates have an equal number of votes where both or all of such candidates cannot be elected, or the votes for the affirmative and negative on a by-law or question are equal, the clerk shall publicly declare the result and post up in a conspicuous place a statement showing the number of votes for each candidate and for and against the by-law or question and shall forthwith notify a judge of the result and the judge shall thereupon appoint a time and place to recount the votes cast up for such candidates or concerning such by-law or question.

Application
of ss. 83-90

(2) In such proceedings, sections 83 to 90 apply *mutatis mutandis*. 1972, c. 95, s. 80.

RECOUNT

Interpre-
tation

83.—(1) In this section and in sections 84 to 86, “judge” means the judge of the county or district court in which the municipality or part thereof or the administrative or head office of the local board is situate. 1972, c. 95, s. 81 (1).

Where
recount
desirable

(2) If, within fourteen days after the declaration by a clerk of the result of an election, upon an application of an elector it is made to appear by affidavit to a judge that the votes have been improperly counted or any ballot paper has been improperly rejected or that an incorrect statement of the number of votes cast for any candidate or for the affirmative or negative on any by-law or question has been made or that the votes have been improperly added up, and if within that time the applicant has given security for the costs in connection with the recount or final addition of any candidate declared elected in the amount of \$100 in legal tender, or if at any time within four weeks after such declaration the council of a municipality or a school board has by resolution declared that a recount or final addition is desirable in the public interest, the judge shall appoint a date and time and place to recount or make a final addition of the votes cast at the election, and shall notify in writing the clerk who made the declaration at least ten days prior to the date set for the recount or final addition. 1972, c. 95, s. 81 (2); 1974, c. 32, s. 35, *amended*.

(3) At least six days notice in writing of the time and place appointed shall be given by the clerk to the candidates and to the applicant, and the clerk or a person appointed by the clerk for the purpose shall attend the recount or final addition with the ballot boxes and all documents relating to the election. 1972, c. 95, s. 81 (3), *amended*.

Notice of
recount

(4) The judge, the clerk, a person appointed by the clerk, each candidate and his scrutineer appointed to attend the recount or final addition, and such other persons as the council may appoint where the recount or final addition relates to a by-law or question, but no other person, except with the approval of the judge, is entitled to be present at the recount. 1972, c. 95, s. 81 (4).

Who may be
present

(5) Where a recount relates to the election of a candidate, the recount shall be of the votes cast respectively for the candidate declared elected when one only is to be elected or in other cases for the candidate who received the lowest number of votes of those declared elected by the clerk and for the defeated candidate who received the highest number of votes for the same office unless any other candidate in writing requires the votes cast for him to be recounted or the votes cast for him to be finally added. 1972, c. 95, s. 81 (5), *amended*.

What ballots
involved in
recount

(6) Notwithstanding subsection 5, the judge conducting the recount may order the recount of the votes cast for any other candidate whose election or right to any other office may be affected in any way by the recount conducted under subsection 5. *New*.

Judge may
order recount,
etc., of votes
cast for other
candidates

(7) At the time and place appointed, and in the presence of such of the persons entitled to be present as may attend, the judge conducting a recount or final addition of the votes cast at an election shall make such final addition from the statements returned to the clerk by the deputy returning officers, or recount all the ballots received by the clerk from the deputy returning officers and the number of votes counted at the election and shall for the purposes of the recount open the sealed packets containing the used ballots that were not objected to and were counted, the ballots that were objected to but which were counted, the rejected ballots, the cancelled ballots, the ballots that were used but were unmarked, the declined ballots and the unused ballots. 1972, c. 95, s. 81 (6), *amended*.

Procedure
by judge

(8) Subject to subsection 9, the judge shall proceed according to the provisions of this Act for the counting of the ballots and of the vote at the close of the poll by a deputy returning officer, and shall verify and correct the statement of the poll.

Rules to
govern
proceedings

Judge may
hear any
evidence
necessary for
proper
recount

(9) If for any reason it appears desirable to do so the judge, upon the application of any party to a recount, may hear such evidence as he considers necessary for the purpose of making a full and proper recount of the ballots, and, without restricting the generality of the foregoing, he may, if the recount results in any of the candidates for any office being declared to have received the same number of votes as any other candidate or candidates who were parties to the recount, hear such evidence as he considers necessary to determine who was elected to that office. 1972, c. 95, s. 81 (7, 8).

Judge to
notify clerk
of result of
recount or
final addition

(10) Upon the completion of a recount, or final addition, the judge shall forthwith notify in writing the result of the recount or final addition to the clerk and announce the results to persons present at the recount, and, immediately after the expiry of the appeal period specified in section 88, all the ballots and statements shall be sealed in separate packets in the manner prescribed by the judge. 1972, c. 95, s. 81 (9), *amended*.

Clerk of
court

(11) The judge may require the clerk of the county or district court to be present at the time and place appointed. 1972, c. 95, s. 81 (10).

If no appeal,
clerk to
declare
result

84. If no notice of appeal is given to the judge within two days after the completion of a recount or his final addition, the judge shall certify forthwith the result to the clerk who shall then declare the candidate having the greatest number of votes to be elected or certify to the council the result of the vote with respect to a by-law or question. 1972, c. 95, s. 82 (2).

Equality
of votes

85.—(1) In the case of an equality of votes for candidates for any office for which one person only is to be elected, or for which the holding of any other office is to be determined as a result of a recount or final addition, the clerk shall forthwith after receiving the certificate give a vote for one or more of the candidates so as to decide the election. 1972, c. 95, s. 83, *amended*.

Clerk may
give casting
vote only

(2) Except to give a casting vote under subsection 1, the clerk is not entitled to vote at an election. *New*.

Costs of
recount

86.—(1) The costs of a recount under section 83 are in the discretion of the judge making the recount who may order by whom, to whom and in what manner the costs shall be paid. 1972, c. 95, s. 84 (1).

Awarding
of costs

(2) The judge may in his discretion award costs of a recount or final addition to or against any person who is a party

to it and may fix the amount thereof or order that they be taxed by the clerk of the district or county court on a scale following as nearly as may be the tariff of costs of the county court. 1972, c. 95, s. 84 (2), *amended*.

(3) Where the judge makes no provision as to the costs of a recount or final addition, the disbursements made or authorized to be made by the clerk shall be paid by the municipality except where the recount or final addition has been held at the instance of a school board, in which case the disbursements made by the clerk shall be paid by the board. 1972, c. 95, s. 84 (3); 1974, c. 32, s. 36 (1). Where no provision as to costs

(4) Where costs are directed to be paid by the applicant for a recount or final addition, the money deposited as security for costs under section 83 shall be paid out to the party entitled to such costs, so far as necessary. Payment of deposit

(5) Payment of the costs awarded under this section may be enforced by execution to be issued from any county or district court, upon filing therein the order of the judge and a certificate showing the amount at which the costs were taxed and an affidavit of the non-payment of them. 1972, c. 95, s. 84 (4, 5). Enforcement of payment of costs

(6) The judge is entitled to receive from the municipality the expenses necessarily incurred in attending at the place designated by him for a recount or final addition except where the recount or final addition has been held at the instance of a school board, in which case the expenses shall be paid by the board. 1972, c. 95, s. 84 (6); 1974, c. 32, s. 36 (2). Expenses of judge

87.—(1) Upon expiry of the time for appeal from a decision of a judge on a recount or final addition if no appeal has been taken, the judge shall cause packets, sealed in accordance with subsection 10 of section 83, to be returned to the custody of the clerk. Where no appeal, packets to be returned to clerk

(2) If an appeal is taken from the decision of a judge on a recount or final addition, the judge shall cause such of the packets of ballots and such of the original statements as are not required for the purpose of the appeal to be returned to the custody of the clerk. 1972, c. 95, s. 85, *amended*. Documents not required on appeal

APPEAL FROM DECISION ON RECOUNT OR FINAL ADDITION

88.—(1) Any party may appeal from the decision of the judge who conducted a recount or final addition other than a Appeal from decision of judge

decision on a recount or final addition of votes in relation to any by-law or question, by giving notice in writing within two days after the completion of the recount or final addition to the other parties and to the judge of his intention to appeal, and he may by the notice limit the appeal to specified ballots.

Service of
notice

(2) The notice may be served upon the other parties personally, or as a judge of the Supreme Court may direct. 1972, c. 95, s. 86 (1, 2).

Ballots, etc.,
to be for-
warded to
Registrar
of Supreme
Court

(3) Where the appeal is limited, the judge who conducted the recount or final addition shall forward the sealed packets of the ballots or statements that are the subject of appeal, together with the notice and a certificate showing his findings as to the ballots in dispute, by registered mail to the Registrar of the Supreme Court, but, if the appeal is not limited the judge shall forward all the ballots and other papers to the Registrar, and in either case he shall await the result of the appeal before sending his certificate under section 83 to the clerk. 1972, c. 95, s. 86 (3), *amended*.

Appointment
for hearing

(4) On receipt of the ballots and notice, the Registrar shall forthwith obtain an appointment from a judge of the Supreme Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed.

Procedure on
appeal

(5) At the time appointed, the judge of the Supreme Court shall recount the ballots or such of them as are the subject of appeal, or review the final addition, as the case may be, and shall forthwith certify his decision to the judge who conducted the recount or final addition, whose duty it is to conform to the decision and to certify the result without delay to the clerk.

Costs of
appeal

(6) The judge of the Supreme Court may direct by and to whom, the costs of the appeal shall be paid.

Idem

(7) Where the judge of the Supreme Court makes no provision as to costs, the disbursements made or authorized to be made by the clerk, shall be paid by the municipality. 1972, c. 95, s. 86 (4-7).

DISPOSITION OF ELECTION RECORDS

Disposition
of ballots

89.—(1) The clerk shall retain in his possession for ninety days from the date of the poll for an election all the ballots in the election and, unless otherwise directed by an order of a judge or officer having jurisdiction to inquire as to the validity of

the election, shall then destroy them in the presence of two witnesses, who shall make a statutory declaration that they witnessed the destruction of them and such declaration shall be filed in the office of the clerk.

(2) Subject to subsection 1, the clerk shall retain in his possession all oaths, nominations, qualification documents, statements of the votes cast, and other documents relating to an election until the successors to the persons elected at such election have taken office, and may then destroy them. 1972, c. 95, s. 87. Disposition of other documents

90.—(1) No person shall be allowed to inspect the contents of a ballot box in the custody of the clerk except under the order of a judge. 1974, c. 32, s. 37. Inspection of ballots

(2) The order may be made on the judge being satisfied by affidavit or other evidence that the inspection is required for the purpose of maintaining a prosecution for an offence, or corrupt practice, or of taking proceedings for contesting the election or return. 1972, c. 95, s. 88 (2). Order of judge

91. Where an order is made for the production by the clerk of any document in his possession relating to an election, the production of it by him in such manner as may be directed by the order is evidence that the document relates to the election, and any endorsement appearing on any packet of ballots so produced is evidence that the contents are what they are stated to be by the endorsement. 1972, c. 95, s. 89. Production of documents by clerk

NEW ELECTIONS

92.—(1) Where a new election is required under the authority of this or any other Act to fill a vacancy in any office by an election other than a regular election, the clerk of the municipality who is the returning officer with whom nominations may be filed shall set the date of the nomination day which shall be within forty-five days of the day on which, New election

- (a) a directive is given in any judicial proceedings;
- (b) the council of the municipality passes a by-law; or
- (c) the clerk receives from the secretary of a school board notice,

that such an election is required. 1972, c. 95, s. 90 (1), *amended*.

Procedure

(2) The procedure including the period for filing nominations at a new election shall be the procedure and period applicable at a regular election of the municipality and polling day shall be not less than eighteen and not more than twenty-one days after nomination day.

Polling

(3) The polling required to fill a vacancy in an office by this section shall so far as possible be held in the same manner and by the same officers and take place at the same places, in so far as practicable, at which the polling took place at the last regular election. 1972, c. 95, s. 90 (2, 3).

List of electors

(4) Unless a new preliminary list of electors has been furnished by the assessment commissioner under subsection 5, the preliminary list to be used for preparation of the polling list for a new election shall be the polling list prepared for the last regular election, which shall be subject to revision as if it were a preliminary list of electors and sections 24 to 30 apply *mutatis mutandis* to the printing or reproduction of the list and to the revision of the list, subject to the following rules:

1. Where a new election is required under clause *a* of section 38 or subsection 3 of section 40, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the Thursday following the polling day for the last regular election.
2. Where a new election is required under section 111, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the receipt by the clerk of the municipality of the copy of the judgment under subsection 6 of section 111.
3. Where a vacancy otherwise occurs and the council of the municipality or a school board for which the clerk is required to hold elections requires an election to be held to fill the vacancy, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the directive, by-law or notice specified in clause *a*, *b* or *c* of subsection 1.

4. Where a by-law or question is to be submitted to the electors, the period during which a person may qualify as an elector entitled to vote on the by-law or question, as the case may be, shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the order of the Ontario Municipal Board given under section 262 of *The Municipal Act*. 1974, c. 32, s. 38 (1), *amended*. R.S.O. 1970, c. 284

(5) Where in the year following an election year the annual enumeration under *The Assessment Act* has, prior to the holding of the new election, been completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election. 1972, c. 95, s. 90 (5). Idem R.S.O. 1970, c. 32

(6) The preliminary list for a new election, when revised, shall be subject to certification by the clerk under section 31 and to entry of names in the list under sections 33 and 56. 1974, c. 32, s. 38 (2), *part*. Certification of list

(7) Where a vacancy occurs in any office and an election is to be held to fill such vacancy, a person holding any other office is not eligible to be a candidate for the vacant office unless he has, before the nomination day for the new election, filed with the clerk a certified copy of his resignation from the office that he then holds with evidence satisfactory to the clerk that such resignation has been filed as required by legislation governing the office that he then holds. 1972, c. 95, s. 90 (6). Eligibility of member to be candidate for other office

(8) Notwithstanding anything in this or any other general or special Act, a new election shall not be held to fill a vacancy where the vacancy occurs after the 31st day of March of an election year. 1972, c. 95, s. 90 (7). Vacancy after March 31st of election year

(9) If election to the office for which a new election is required is to be by ward or other form of division of the municipality it is necessary to revise only that portion of the preliminary list applicable to such ward or other part of the municipality. 1974, c. 32, s. 38 (2), *part*. Revision of partial list

Council may
meet not-
withstanding
vacancy

93. Notwithstanding that a new election becomes necessary, meetings of the council may be held if a quorum of the council is present. 1972, c. 95, s. 91.

EFFECT OF IRREGULARITIES

Irregularities
not to offset
result

94. No election shall be declared invalid,

- (a) by reason of any irregularity on the part of the clerk or in any of the proceedings preliminary to the poll;
- (b) by reason of a failure to hold a poll at any place appointed for holding a poll;
- (c) by reason of non-compliance with the provisions of this Act as to the taking of the poll, as to the counting of the votes or as to limitations of time; or
- (d) by reason of any mistake in the use of the prescribed forms,

if it appears to the court having cognizance of the matter that the election was conducted in accordance with the principles of this Act and that the irregularity, failure, non-compliance or mistake did not affect the result of the election. 1972, c. 95, s. 92.

SECRECY OF PROCEEDINGS

Secrecy of
proceedings

95.—(1) Every person in attendance at a polling place or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting.

Interference
with
voter

(2) No person shall interfere or attempt to interfere with an elector when marking his ballot paper, or obtain or attempt to obtain at the polling place information as to how an elector is about to vote or has voted.

Communica-
tion as to
voting

(3) No person shall communicate any information obtained at a polling place as to how an elector at such polling place is about to vote or has voted.

Inducing
person to
show ballot

(4) No person shall, directly or indirectly, induce or attempt to induce an elector to show his ballot paper after he has marked it so as to make known to any person how he has voted.

Voter not
to show
ballot

(5) Subject to section 63, an elector shall not show his ballot paper, when marked, to any person so as to make known how he voted.

(6) No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state how or for whom he has voted. 1972, c. 95, s. 93.

No one compellable to disclose his vote

OFFENCES, PENALTIES AND ENFORCEMENT

96. Every person who, at an election,

Voting when not qualified, etc.

- (a) not being qualified to vote, votes;
- (b) being qualified to vote, votes more times than he is authorized to vote by this Act; or
- (c) votes in a polling subdivision other than one in which he is entitled to vote by this Act,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both. 1972, c. 95, s. 94.

97. Every person who,

Improper voting by proxy

- (a) having appointed a voting proxy to vote at an election, attempts to vote at the election otherwise than by means of such voting proxy while the voting proxy is in force; or
- (b) having been appointed a voting proxy at an election, votes or attempts to vote at the election under the authority of the proxy when he knows or has reasonable grounds for supposing that his appointment has been cancelled or that the elector who made the appointment is dead or is no longer entitled to vote,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both. 1972, c. 95, s. 95.

98. Every deputy returning officer or poll clerk who wilfully miscounts the ballots or otherwise wilfully makes up a false statement of the poll is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both. 1972, c. 95, s. 96.

Wilful miscount of ballots

99. Every clerk, deputy returning officer or poll clerk who refuses or neglects to perform any of the duties imposed upon him by this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. 1972, c. 95, s. 97.

Neglect of duties

Offences
relating to
ballot
papers

100. Every person who,

- (a) without authority, supplies a ballot to any person;
- (b) places in a ballot box a paper other than the ballot that he is authorized by law to place therein;
- (c) delivers to the deputy returning officer to be placed in the ballot box any other paper than the ballot given to him by the deputy returning officer;
- (d) takes a ballot out of the polling place;
- (e) without authority, takes, opens or otherwise interferes with a ballot box or books or packet of ballots or a ballot in use or used for the purpose of an election;
- (f) being a deputy returning officer, knowingly puts his initials on the back of any paper that is not a ballot, purports to be or is capable of being used as a ballot at an election; or
- (g) attempts to commit any offence mentioned in this section,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both. 1972, c. 95, s. 98.

False
information
to authorized
persons

101. Every person who knowingly furnishes false or misleading information to any person who by this Act is authorized to obtain information is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both. 1972, c. 95, s. 99.

Offences of
inducing un-
qualified
person to vote
or publishes
false state-
ment of with-
drawal of
candidate

102. Every person who,

- (a) induces or procures any person to vote knowing that that person has no right to vote; or
- (b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate,

is guilty of a corrupt practice and is liable to a fine of not more than \$1,000, or to imprisonment for a term of not more than six months, or to both. 1972, c. 95, s. 100.

Bribery;

103.—(1) Every person who,

- (a) directly or indirectly, himself or by any other person on his behalf, gives, lends or agrees to give or lend, or

bribing
elector or
procuring
bribery by
money

offers or promises any money or valuable consideration, or promises to procure or to endeavour to procure any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at an election; or

- (b) directly or indirectly, himself or by any other person on his behalf, gives or procures or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavour to procure any office, place or employment to or for any elector, or to or for any other person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at an election; or by gift or offer or promise of employment
- (c) directly or indirectly, himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement, to or for any person, in order to induce such person to procure or endeavour to procure the return of any candidate, or the vote of any elector at an election; or to induce anyone to procure return of candidate or endeavour to procure
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any candidate, or the vote of any elector at an election; or receiving bribe to procure return of candidate
- (e) advances or pays, or causes to be paid, money to or to the use of any other person, with the intent that such money or any part of it shall be expended in corrupt practices at an election, or who knowingly pays or causes to be paid money to any person in discharge or repayment of money wholly or in part expended in corrupt practices at an election; or advancing money to be spent in corrupt practices
- (f) directly or indirectly, himself or by any other person on his behalf, on account of and as payment for voting or for having voted, or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for having illegally assisted or agreed to assist any candidate at an election, applies to such candidate for the gift or loan of any money or valuable consideration, or for the promise of the applying for money or employment in consideration of voting

gift or loan of any money or valuable consideration, or for any office, place or employment, or the promise of any office, place or employment; or

receiving
money,
office, etc.,
for having
voted

(g) before or during an election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at an election; or

receiving
money
corruptly
after
election

(h) after an election, directly or indirectly, himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting at an election; or

giving or
promising
office to
candidate
to stand or
withdraw

(i) in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure, or endeavours to procure any office, place or employment for such person, or for any other person,

is guilty of bribery, and on summary conviction is liable to a fine of \$200, or to imprisonment for a term of not more than six months, or to both, and is disqualified from voting at any election for four years.

Personal
expenses of
candidate

(2) The actual personal expenses of a candidate, his reasonable expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising and other lawful and reasonable expenses in connection with the election, incurred by the candidate in good faith and without any corrupt intent, shall be deemed to be expenses lawfully incurred, and the payment thereof is not a contravention of this Act.

Posting of
provisions
as to corrupt
practices

(3) The clerk shall furnish every deputy returning officer with at least two copies of this section, and the deputy returning officer shall post them in conspicuous places at the polling place. 1972, c. 95, s. 101.

General
offence

104. Every person who contravenes any of the provisions of this Act, for which contravention no penalty is otherwise provided, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. 1972, c. 95, s. 102.

105.—(1) Where a candidate at an election is convicted of bribery or of committing a corrupt practice, he is ineligible to be nominated and stand as a candidate at any election up to and including the next regular election, or to hold any office at the nomination of a municipal council or local board for four years following the date of the poll. Disqualification of persons guilty of corrupt practice

(2) If, when the candidate is convicted of committing a corrupt practice, the presiding judge finds that the act constituting in law a corrupt practice was committed without any corrupt intent, the candidate is not subject to the penalties and disabilities provided by subsection 1. 1972, c. 95, s. 103. Limitation

CORRUPT PRACTICES AND CONTROVERTED ELECTIONS

106.—(1) The validity of an election or of the election of any person to any office at such an election or whether or not any person is guilty of a corrupt practice respecting an election shall be tried and determined by an action commenced by issuing a writ in the county or district court for the county or district in which the municipality or the administrative or head office of the local board is situated. Validity of election, etc., determined by action

(2) Where the county or district court determines that a person has committed a corrupt practice it may, in addition to any other penalty or order, impose the penalties provided therefor under sections 96 to 102. 1972, c. 95, s. 104 (1, 2). Penalties for corrupt practice

(3) Any elector entitled to vote at an election referred to in subsection 1 may commence an action under this section in relation to such election. 1972, c. 95, s. 104 (3), *amended*. Who may commence action

(4) No action shall be commenced after the expiration of ninety days following the date of the poll at the election referred to in subsection 1. 1972, c. 95, s. 104 (4). Time for commencing action

107.—(1) The judge shall, in a summary manner and without formal pleadings, hear and determine the questions raised by or upon an action under section 104 and may give directions as to the conduct thereof and may inquire into the facts on affidavit, by oral testimony, or by trying an issue framed by him, or by one or more of those means. Mode of trial

(2) Subject to subsection 1 and where not otherwise provided in this Act, the practice and procedure of the county or district court apply to an action commenced under section 104. Idem

(3) The action shall be tried by a judge without a jury. 1972, c. 95, s. 105. Judge without jury

Security
for costs

108.—(1) At the time of the commencement of an action, security shall be given on behalf of the plaintiff to be applied towards payment of all costs, charges and expenses, if any, that may become payable by the plaintiff, including the costs and charges of the clerk incurred in the publication of notices in the municipality in respect of the writ of the action or proceedings therein.

Idem

(2) The security shall be in the amount of \$400 and shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario. 1972, c. 95, s. 106.

Abatement
of action

109.—(1) An Action abates on the death of a sole plaintiff or the survivor of several plaintiffs.

Liability
for costs

(2) The abatement of an action does not affect any liability for costs previously incurred.

Substitution
of plaintiff

(3) On the abatement of an action any person who might have been a plaintiff may apply to a judge of the court or, during the trial, to the trial judge to be substituted as the plaintiff. 1972, c. 95, s. 107.

Substitution
for
unqualified
person

110. Where a plaintiff is not qualified to be a plaintiff in an action under this Act, the action shall not on that account be dismissed if, within such time as a judge of the court or, during the trial, the trial judge allows for that purpose, another plaintiff is substituted and substitution shall be made on such terms and conditions as the judge considers proper. 1972, c. 95, s. 108.

Successful
candidate
guilty of
corrupt
practice

111.—(1) Where it is determined that a successful candidate is guilty of bribery or of a corrupt practice, the court may declare his election void and his office shall thereupon become vacant.

Unseating
and seating
of another
elected
candidate

(2) Where the election of any person is declared void, the court may order that he be removed from office and, if it is determined that any other person would have been elected but for the corrupt practice that he be admitted to take his seat in the council or board or, if it is determined that no other person is elected, a new election shall be held.

Where
commission
of corrupt
practice
affected
result of
election

(3) Where it is determined that any person is guilty of bribery or of a corrupt practice and that the commission of the bribery or corrupt practice affected the result of the election, the court may declare the election void and a new election shall be held.

(4) Where it is determined that any act or omission of an election official affected the result of an election, the court may declare the election void and a new election shall be held. Where act of election official affected result of election

(5) Where a new election is to be held, the court may make such order as it considers just against any person who is found guilty of an offence or of bribery or a corrupt practice under this Act for the compensation of candidates at the void election not exceeding \$2,000 per candidate. Compensation of candidates where election void

(6) The clerk of the court shall forward a copy of the judgment and the reasons for judgment to the clerk of the municipality. 1972, c. 95, s. 109. Judgment to clerk

112.—(1) If the court determines that a member was not duly elected, notwithstanding that an appeal from the decision is pending, he is not entitled to sit or vote on the council or board until the appeal is disposed of and the judgment of the court on appeal is received by the council or local board, but where the court determines that some other person was elected or is entitled to the seat, such person is, notwithstanding that an appeal is pending, entitled to take his seat and to sit and vote until the appeal is disposed of and the judgment of the court on appeal is received by the council or local board. 1972, c. 95, s. 110. Where election set aside and appeal entered

(2) The decisions of a council reached with the participation of a member or members who is or are subsequently declared to be not entitled to sit on council shall not in any way be affected on the grounds of the participation of such member or members. *New.* Decisions of council not affected by reason of subsequent disqualification

113. A new election shall not be held until after the expiration of the time limited for appeal from the determination of the court that the election is void and, if an appeal is brought, the election shall not be held pending the appeal. 1972, c. 95, s. 111. New election not to be held pending appeal

114.—(1) An appeal lies from the judgment of the county or district court to the Divisional Court in accordance with the rules of court. Appeal to Divisional Court

(2) The Divisional Court may give any judgment that ought to have been pronounced or may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or to another judge and, subject to any directions of the Divisional Court, the case shall thereafter be proceeded with as if there had been no appeal. Judgment or new trial

Appeal from
decision on
new trial

(3) An appeal lies from the decision of the trial judge to whom the case was remitted by the Divisional Court in accordance with the provisions of this section. 1972, c. 95, s. 112.

Disclaimer
before
complaint

115. Any person elected may, at any time after the election and before it is complained of, deliver to the clerk of the municipality a disclaimer, signed by him, to the following effect:

“I, A.B., hereby disclaim all right to the office of
.....for the.....of
.....in the.....of
.....and all defence of any right I may
have to the same. Dated.....day of
....., 19.... A.B.”

1972, c. 95, s. 113.

Disclaimer
after
complaint

116. A person whose election is complained of, unless it is complained of on the ground of bribery or of a corrupt practice on his part, may, within one week after service on him of the writ, transmit by registered mail, or deliver to the judge of the court, and to the applicant or his solicitor, a disclaimer signed by him to the following effect:

“I, A.B., upon whom a writ, authorized by *The Municipal Elections Act, 1972*, has been served for the purpose of contesting my right to the office
of....., in the county (or district)
of....., hereby disclaim the office, and
all defence of any right I may have to the same.
Dated.....day of....., 19....
A.B.”

1972, c. 95, s. 114.

Duplicate
of disclaimer
to clerk

117.—(1) A person disclaiming shall deliver a duplicate of his disclaimer to the clerk of the municipality, and the clerk shall forthwith communicate it to the council or to the secretary of the local board, as the case requires. 1972, c. 95, s. 115 (1); 1974, c. 32, s. 39.

(2) A disclaimer in accordance with section 115 or 116 Operates as resignation operates as a resignation.

(3) A disclaimer in accordance with section 116 Relief from costs relieves the person making it from all liability for costs in an action under section 104. 1972, c. 95, s. 115 (2, 3).

118. Proceedings for the removal from office of a person Procedure substituted for quo warranto proceedings whose election is alleged to have been undue or illegal, or who is alleged not to have been duly elected, and proceedings to have the right of a person to sit in a council or as trustee of a police village or as member of a local board, as the case may be, determined shall be had and taken only under the provisions of this Act. 1972, c. 95, s. 116; 1974, c. 32, s. 40, *amended*.

119.—(1) The Minister may by order prescribe the forms Forms required for the purposes of this Act, which forms may be in both the English and French languages. 1975, c. 23, s. 1, *part*.

(2) Any notices required to be posted, published or mailed Notices in French language under this Act may, in addition to being printed in the English language, be printed in the French language.

(3) The use in a municipality of forms prescribed in the French language under subsection 1 or the printing of notices Determination by council of French-language forms, etc. in the French language under subsection 2 shall be determined by by-law of the council of the municipality. *New*.

120. Where any day specified in this Act for the under- Holidays taking of any proceeding pertaining to an election falls on a Sunday or on a holiday, the day specified shall be deemed to be the immediately preceding day which is not a Sunday or a statutory holiday. *New*.

121. This Act comes into force on the 1st day of January, Commencement 1978.

122. The short title of this Act is *The Municipal Elections Act*, 1977. Short title

An Act respecting
Municipal Elections

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

THE HON. W. D. McKEOUGH
Treasurer of Ontario and
Minister of Economics and
Intergovernmental Affairs

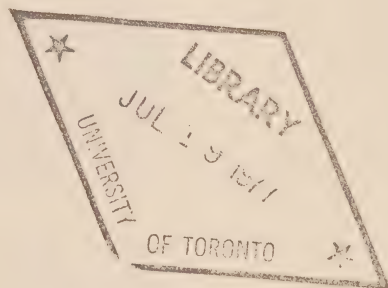
(Government Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to provide for Freedom of Information

MR. LAWLOR



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of this Bill is to provide members of the public with access to Government information. The Bill is designed to allow maximum accessibility to Government documents while, at the same time, recognizing that it is in the public interest that certain types of information not be disclosed. Where a disagreement arises as to whether or not certain information should be disclosed, the Bill provides a mechanism for resolving the dispute.

BILL 50

1977

An Act to provide for Freedom of Information

WHEREAS, for the furtherance of democratic principles Preamble
and practices in the Province of Ontario, it is right
and expedient that the fullest and most objective dis-
closure of government programs, policies, activities and
operations be openly declared and made available;

Therefore, Her Majesty, by and with the advice and
consent of the Legislative Assembly of the Province of
Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "governmental organization" means the Executive Council, a ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof;
- (b) "public document" means any document, record, book, paper, report, order, decision, map photograph, film, card, tape, recording, minutes, statistical compilation or part thereof of form or character prepared or received by a governmental organization as a result of the spending of public moneys, and includes,
 - (i) final opinions, including concurring and dissenting opinions made in the adjudication of cases,
 - (ii) statements of policy and interpretations of policy,
 - (iii) administrative staff manuals and instructions of staff which affect members of the public,
 - (iv) any account, voucher, tender or contract dealing with receipt or expenditure of public funds.

Public access
to documents

2. Subject to section 3, any person may request in writing from a governmental organization any public document or, where the request reasonably identifies a subject-matter, a list of public documents affecting the subject-matter and, upon receiving the request, the governmental organization shall make available as soon as possible such document or list of documents for examination or copying.

Exceptions

3.—(1) The following public documents are exempt from the provisions of section 2:

1. Documents, the release of which would be detrimental to the security of Ontario or Canada.
2. Documents in respect of international relations, the release of which would be detrimental to the conduct of Canada's foreign relations or Ontario's relations with other countries.
3. Documents, the release of which would be detrimental to the conduct of federal-provincial relations or the relations of the provinces with one another.
4. Documents, the release of which would constitute a clearly unwarranted invasion of personal privacy.
5. Documents relating to negotiations leading up to a contract unless the contract has been executed or the negotiations have been concluded.
6. Documents relating to policy decisions under consideration but not yet finalized.
7. Documents relating to an investigation or inquiry in the administration of justice, but does not include legal opinions or advice prepared or received by a governmental organization unless the document containing the legal opinion or advice is expressly designated as privileged by the Executive Council or the Attorney General.
8. Documents that are excluded from disclosure by statute.
9. Minutes of the Executive Council and its committees.
10. Any proceedings before a court of justice or a judicial inquiry.

11. Any matter which may be exempted by the regulations.

(2) Any regulation made under this Act exempting a public document from disclosure does not have effect until it has been referred to the Standing Committee on Regulations and reported by the Committee to the Legislative Assembly.

4.—(1) Where a person makes a request under section 2 and receives no response from the governmental organization within a reasonable time or, for any reason, considers the response inadequate, the person may apply to the Ombudsman, under *The Ombudsman Act, 1975*, for a review. 1975, c. 42

(2) The provisions of *The Ombudsman Act, 1975* in respect of the investigation of complaints apply to an application under this section *mutatis mutandis*. Idem

(3) Where the Ombudsman is of the opinion that it is in the public interest that a document be released, a list produced or further disclosure provided, in addition to his powers under *The Ombudsman Act, 1975*, the Ombudsman may direct the governmental organization to make such compliance with the request as he thinks fit. Direction by the Ombudsman

5.—(1) After a decision is made by the Ombudsman under section 4, the person making the request or the governmental organization to which the request is addressed may apply to a judge of the High Court for an order determining whether or not a public document, list or further disclosure should be provided. Application to judge

(2) Where a governmental organization claims an exemption under section 3, it may file a statement of particulars in a sealed envelope with the court in support of its claim. Sealed statement of particulars

(3) At any stage in the proceedings, the judge may order that the statement of particulars be resealed or disclosed in whole or in part to the other party or otherwise dealt with as he thinks fit. Idem

6. In any proceeding before the Ombudsman or a court under this Act, the Crown shall pay all of the costs of a person making a request under section 2, unless, in the opinion of the Ombudsman or the court, the request is made for a frivolous or vexatious purpose. Costs

Release of
documents by
Lieutenant
Governor
in Council

7. Notwithstanding section 3, the Lieutenant Governor in Council may order the release of a public document which is exempt where the release of the document is in the public interest.

Regulations

8. The Lieutenant Governor in Council may make regulations,

- (a) exempting any document or class of document from the application of this Act;
- (b) prescribing the times and places at which public documents are available for examination or copying;
- (c) prescribing the terms and conditions under which public documents or lists of public documents are released;
- (d) prescribing the costs to be paid for the release or copying of a public document;
- (e) prescribing forms and providing for their use;
- (f) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Freedom of Information Act, 1977*.

An Act to provide for
Freedom of Information

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

MR. LAWLOR

(Private Member's Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

*Government
Publications*

An Act respecting Occupiers' Liability

MR. LAWLOR



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill replaces the common law as to an occupier's duty of care, replacing the common law distinctions between duties to invitees, licensees, trespassers and child trespassers with one common duty of care applied to the circumstances of each case.

The Bill is in the form recommended by The Uniform Law Conference of Canada.

BILL 52

1977

An Act respecting Occupiers' Liability

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "occupier" means,

- (i) a person who is in physical possession of premises, or
- (ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter the premises,

and, for the purposes of this Act, there may be more than one occupier of the same premises;

(b) "premises" includes,

- (i) land and structures or either of them, excepting portable structures and equipment other than those described in subclause iii,
- (ii) ships and vessels,
- (iii) trailers and portable structures designed or used for a residence, business, or shelter,
- (iv) railway locomotives, railway cars, vehicles, and aircraft while not in operation.

2. Subject to subsection 4 of section 3, and sections 4 and 9, the provisions of this Act determine the care that

Application
of Act

an occupier is required to show toward persons entering on the premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which he is in law responsible.

Occupiers'
duty of
care

3.—(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that any person, and his property on the premises, and any property on the premises of a person, whether or not that person himself enters on the premises, will be reasonably safe in using the premises.

Idem

(2) The duty of care referred to in subsection 1 applies in relation to,

- (a) the condition of the premises; or
- (b) activities on the premises; or
- (c) the conduct of third parties on the premises.

Where no
duty of
care

(3) Notwithstanding subsection 1, an occupier has no duty of care to a person in respect of risks willingly accepted by that person as his own risks.

Higher
standard
of care
preserved

(4) Nothing in this section relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent upon him by virtue of an enactment or rule of law imposing special standards of care on particular classes of persons.

Contracting
out

4.—(1) Subject to subsections 2, 3 and 4, where an occupier is permitted by law to extend, restrict, modify, or exclude his duty of care to any person by express agreement, or by express stipulation or notice, the occupier shall take reasonable steps to bring such extension, restriction, modification, or exclusion to the attention of that person.

Idem

(2) Subsection 1 does not apply to a person,

- (a) who is not privy to the express agreement;
- (b) who is empowered or permitted to enter or use the premises without the consent or permission of the occupier.

(3) Where an occupier is bound by contract to permit ^{Duty owed to persons not privy to contract} persons who are not privy to the contract to enter or use the premises, the duty of care of the occupier to such persons shall, notwithstanding anything to the contrary in that contract, not be restricted, modified or excluded thereby.

(4) This section applies to express contracts entered ^{Applicable to express contracts} into before or after the commencement of this section.

5.—(1) Notwithstanding subsection 1 of section 3, where ^{Independent contractors} damage is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances,

- (a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and
- (b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection 1 shall not be construed as restricting ^{Idem} or excluding the liability of an occupier for the negligence of his independent contractor imposed by any other Act.

(3) Where there is damage under the circumstances set ^{Idem} out in subsection 1, and there is more than one occupier of the premises, each occupier is entitled to rely on the provisions of subsection 1.

6.—(1) Where premises are occupied or used by virtue ^{Landlord and tenant relationship} of a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from any failure on his part in carrying out his responsibility, as is required by virtue of this Act to be shown by an occupier of premises toward persons entering on or using them.

(2) Where premises are occupied by virtue of a sub- ^{Sub-tenancy} tenancy, subsection 1 applies to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy.

(3) For the purposes of this section, a landlord shall ^{Idem} not be deemed to be in default in his duty under subsection 1 unless his default is such as to be actionable at the suit of the occupier.

Other duties preserved (4) Nothing in this section shall be construed as relieving a landlord of any duty he may have apart from this section.

Idem (5) For the purposes of this section, obligations imposed by any enactment in respect of a tenancy shall be deemed to be imposed by the tenancy, and "tenancy" includes a statutory tenancy, an implied tenancy, and any contract conferring the right of occupation, and "landlord" shall be construed accordingly.

Application of section (6) This section applies to tenancies created before or after the commencement of this section.

Application of R.S.O. 1970, c. 296 **7.** *The Negligence Act* applies to this Act.

Crown bound R.S.O. 1970, c. 365 **8.**—(1) Except as otherwise provided in subsection 2, the Crown is bound by this Act, and *The Proceedings Against the Crown Act* applies.

Idem (2) Notwithstanding subsection 1, this Act does not apply to the Crown or to a municipality where the Crown or the municipality is the occupier of a public highway or public road.

Not to affect certain relationships **9.** This Act does not apply to or affect,
(a) the liability of an employer in respect of his duties to his employee; or

(b) the liability of any person by virtue of a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft, or other means of transport; or

R.S.O. 1970, c. 223 (c) the liability of any person under *The Innkeepers Act*; or

(d) the liability of any person by virtue of a contract of bailment.

No retro-activity **10.** Subject to subsection 3 of section 4 and subsection 6 of section 6, this Act applies only in respect of a cause of action arising after this Act comes into force.

Commencement **11.** This Act comes into force on the day it receives Royal Assent.

Short title **12.** The short title of this Act is *The Occupiers' Liability Act, 1977*.

BILL 52

An Act respecting Occupiers' Liability

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

MR. LAWLOR

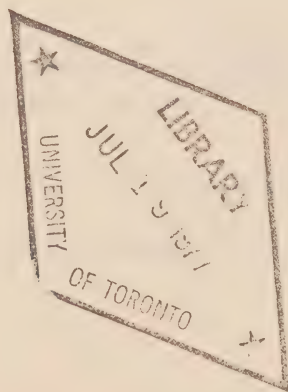
(Private Member's Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

Government
Publications

An Act to amend The Consumer Protection Act

MR. NEWMAN
(Windsor-Walkerville)



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

This Bill requires that every product offered for sale by a retailer that is marked with the universal product code must also be clearly marked with its individual purchase price.

BILL 53

1977

An Act to amend The Consumer Protection Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Consumer Protection Act*, being chapter 82 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section:

47a.—(1) In this section,

Interpre-
tation

(a) “computer price code” means a marking that is designed to be read and recorded by a computer device for the purpose of calculating the purchase price of a product offered for sale and includes the universal product code;

(b) “product” means an item of goods;

(c) “retail seller” means a person who offers a product for sale but not for resale.

(2) No retail seller shall offer for sale a product that is marked with a computer price code unless the individual purchase price of such product is clearly expressed on the product, its wrapper or container.

Individual
purchase
price mark-
ing required

2. This Act comes into force on the day it receives Royal Assent.
3. The short title of this Act is *The Consumer Protection Amendment Act, 1977*.

Commence-
ment

Short title

BILL 53

An Act to amend
The Consumer Protection Act

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

MR. NEWMAN
(Windsor-Walkerville)

(Private Member's Bill)

A26N
X13
B56

Ontario. Legislative Assembly

BILL 54

Private Member's Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

CHAMBERLAIN
JUL 19 1977

An Act to amend The Family Benefits Act

MR. MARTEL



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The purpose of the amendment is to remove any reference to the sex of the parent, thereby enabling either the mother or father of the child to be eligible for benefits.

BILL 54

1977

An Act to amend The Family Benefits Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Clause *d* of subsection 1 of section 7 of *The Family Benefits Act*, being chapter 157 of the Revised Statutes of Ontario, 1970, is repealed and the following substituted therefor:

- (*d*) who is a single parent with a dependent child and,
 - (i) who is a widow or widower, or
 - (ii) whose spouse has deserted the family for three months or more, or
 - (iii) whose spouse is a patient in a sanatorium, hospital or similar institution, or
 - (iv) whose spouse is imprisoned in a penal institution and at the date of the application has a term of imprisonment remaining to be served of six months or more, or
 - (v) who is divorced from the parent of the dependent child and has not remarried, or
 - (vi) a mother, whose dependent child was born out of wedlock, where the mother is sixteen years or more of age and her dependent child is three months or more of age; or

.

- (2) Clause *e* of subsection 1 of the said section 7, as re-enacted by the Statutes of Ontario, 1971, chapter 92, section 4, is repealed.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is *The Family Benefits Amendment Act, 1977*.

BILL 54

An Act to amend
The Family Benefits Act

1st Reading

July 7th, 1977

2nd Reading

3rd Reading

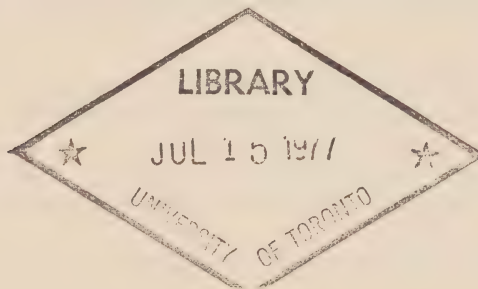
MR. MARTEL

(Private Member's Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to establish Electrical Service Areas in
The Regional Municipality of Waterloo**

THE HON. J. A. TAYLOR
Minister of Energy



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill restructures the municipal hydro-electric utilities within The Regional Municipality of Waterloo.

The area municipalities are organized into three electrical service areas. A hydro-electric commission is established for each area on the day the Act comes into force.

A transitional period is provided before the new commissions become fully operational.

The members of the commissions will include the mayors of the municipalities in the electrical service areas and certain additional members qualified as municipal electors in the more populous municipalities.

Customers within the area municipalities presently served by Ontario Hydro's rural retail power distribution system will be supplied with power by the new commissions.

Provision is made for the transfer of employees and the protection of their salaries and benefits.

BILL 55

1977

**An Act to establish
Electrical Service Areas in
The Regional Municipality of Waterloo**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) “accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “area municipality” means an area municipality within the meaning of *The Regional Municipality of Waterloo Act, 1972*; ^{1972, c. 105}
- (c) “electrical service area” means an electrical service area established by subsection 1 of section 2;
- (d) “Minister” means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (e) “power” means electrical power and includes electrical energy;
- (f) “regulations” means the regulations made under this Act.

2.—(1) On the day this Act comes into force, in The Regional Municipality of Waterloo, <sup>Electrical
service
areas</sup>

- (a) the area within the area municipalities of the City of Waterloo, the Township of Wellesley and the

Township of Woolwich is established as an electrical service area ;

(b) the area within the area municipalities of the City of Kitchener and the Township of Wilmot is established as an electrical service area ; and

(c) the area within the area municipalities of the City of Cambridge and the Township of North Dumfries is established as an electrical service area.

Commissions
established

(2) A hydro-electric commission for each of the electrical service areas established by subsection 1 is hereby established on the day this Act comes into force, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act* by the councils of the area municipalities comprising the electrical service area served by the commission acting in concert and a municipal commission within the meaning of *The Power Corporation Act*, and section 45 of *The Public Utilities Act* does not apply to the commissions.

R.S.O. 1970,
c. 390

R.S.O. 1970,
c. 354

Composition

(3) The commission for the electrical service area established by clause *a* of subsection 1 shall be known as the ESA-1 Hydro-Electric Commission and shall consist of the mayor of the City of Waterloo, the mayor of the Township of Woolwich, the mayor of the Township of Wellesley, three additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Waterloo, and one additional member who is a qualified elector under *The Municipal Elections Act, 1972* in the Township of Woolwich.

1972, c. 95

Idem

(4) The commission for the electrical service area established by clause *b* of subsection 1 shall be known as the ESA-2 Hydro-Electric Commission and shall consist of the mayor of the City of Kitchener, the mayor of the Township of Wilmot, four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Kitchener, and one additional member who is a qualified elector under *The Municipal Elections Act, 1972* in the Township of Wilmot.

Idem

(5) The commission for the electrical service area established by clause *c* of subsection 1 shall be known as the ESA-3 Hydro-Electric Commission and shall consist of the mayor of the City of Cambridge, the mayor of the Township of North Dumfries, and three additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Cambridge.

(6) The name of a commission may be changed by resolution of the commission to a name commencing with the words "Hydro-Electric Commission of". Names of commissions

(7) The additional members in respect of each area municipality shall be appointed on or before the 1st day of October, 1977 by the council of the area municipality from the members of the hydro-electric commissions and public utility commissions distributing and selling power within that municipality on the day this Act comes into force, to serve for a term expiring with the 31st day of December, 1978. Additional members of first commissions

(8) For terms commencing after the 31st day of December, 1978, the additional members in respect of each area municipality shall be elected by a general vote of the electors of the area municipality, unless before the 1st day of January, 1978 the council of the area municipality provides by by-law that the additional member or members in respect of that area municipality shall be appointed by the council. Additional members of subsequent commissions

(9) Members of the councils of the area municipalities comprising the electrical service area in respect of which a commission is established by subsection 2 may be appointed as members of the commission, but the members of the councils shall not form a majority of the commission. Eligibility of members of council

(10) A member of a commission shall hold office for the same term as the members of council or until his successor is elected or appointed. Term of office

(11) The council of an area municipality may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission. Delegates

(12) Where a vacancy in a commission occurs from any cause, the council of the area municipality in respect of which the person whose seat became vacant was elected or appointed shall immediately appoint a successor who shall hold office during the remainder of the term for which his predecessor was elected or appointed. Filling of vacancies

(13) Subject to the approval of Ontario Hydro, the salaries or other remuneration of the commissioners shall from time to time be fixed by the council of the area municipality in respect of which they are elected or appointed, and the salaries of the first commissioners shall be fixed on or before the 1st day of October, 1977 in an amount that does not exceed the highest salary paid to members of hydro-electric commissions and public utilities commissions operating in the Salary

- 1972, c. 105 Regional Area within the meaning of *The Regional Municipality of Waterloo Act, 1972* on the 1st day of January, 1977.
- Resignation (14) A resignation from a council by a member of the council who is a member of a commission established by subsection 2 shall be deemed to be a resignation from both the commission and the council.
- Powers of commissions
R.S.O. 1970, c. 390 **3.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1978, be exercised on behalf of the area municipalities comprising an electrical service area by the commission established by section 2 in respect of that electrical service area and not by the council of any area municipality or the council of The Regional Municipality of Waterloo or any other person or body.
- Idem (2) Subject to subsection 4 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy Board Act*, on and after the 1st day of January, 1978, each commission established by section 2 has the sole right to supply power within its electrical service area, and, on behalf of the area municipalities within its electrical service area, may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within its electrical service area without electoral assent or other approval or authorization and such a contract shall be deemed to be an agreement within the meaning of clause s of subsection 2 of section 293 of *The Municipal Act*.
- R.S.O. 1970, c. 284 (3) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the supply of power to the municipal corporation apply to each of the commissions established by section 2.
- Applica-
tion of
R.S.O. 1970, c. 354 (4) With the consent of a commission established by section 2, Ontario Hydro may supply power directly to customers within the electrical service area in respect of which the commission is established.
- Direct customers
- Transitional (5) Such management and control of works for the distribution and supply of power within the electrical service areas as are exercised by hydro-electric commissions, public utilities commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them

to and including the 31st day of December, 1977, but any of the assets, powers and responsibilities of such commissions may by agreement be transferred before that date to a commission established by section 2.

(6) On the 1st day of January, 1978, all assets under the control and management of and all liabilities of hydro-electric commissions and public utilities commissions distributing and selling power in an electrical service area to the extent that they pertain to the distribution and supply of power in the electrical service area are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the electrical service area.

Transfer of
assets and
liabilities

(7) The trustees of the police village of Baden as it existed on the 31st day of December, 1972 shall be deemed to have been established as a hydro-electric commission for the police village of Baden under Part III of *The Public Utilities Act* and the commission is dissolved on the 2nd day of January, 1978.

Baden
village
trustees
deemed
commission
R.S.O. 1970,
c. 390

(8) Subject to subsection 4 and the regulations, each commission established by section 2 shall acquire, on behalf of the area municipalities comprising the electrical service area served by the commission, the retail distribution facilities within its electrical service area used by Ontario Hydro on the 31st day of December, 1977 in the retail distribution of power including equipment leased by Ontario Hydro to retail customers within the electrical service area for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase of
retail distri-
bution
facilities
from
Ontario
Hydro

(9) If the price of the facilities referred to in subsection 8 has not been determined by the parties before the 1st day of July, 1978, the price shall be determined by arbitration by a single arbitrator pursuant to *The Arbitrations Act* in accordance with subsection 8 and the regulations and the decision of the arbitrator shall not be subject to appeal.

Where price
to be deter-
mined by
arbitration

R.S.O. 1970,
c. 25

4.—(1) All real property transferred pursuant to section 3 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be taken and held by the commission in trust for the area municipalities comprising the electrical service area served by the commission.

Vesting
of real
property

Disposition
of real
property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipalities comprising the electrical service area served by the commission, the real property may be disposed of as follows:

1. In the event that the area municipality in which the real property is located wishes in good faith to retain the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater and the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the area municipality in which the real property is located does not wish to retain the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the area municipalities comprising the electrical service area, and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be paid over to the commission and shall be applied in accordance with *The Public Utilities Act*.

R.S.O. 1970,
c. 390

Borrowing
1972, c. 105

5.—(1) Except as otherwise provided in this Act, sections 122, 133 to 135 and 137 to 155 of *The Regional Municipality of Waterloo Act, 1972* apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Request

(2) With the approval of Ontario Hydro, a commission established by section 2 may request the area municipalities comprising the electrical service area in respect of which the commission is established to approve the borrowing of money and the councils of the area municipalities shall approve or disapprove the borrowing within thirty days of the making of the request.

Approval

(3) Notwithstanding the failure or refusal of the council of an area municipality in an electrical service area in

respect of which a commission is established to approve a proposed borrowing, where one or more area municipalities whose equalized assessment is in the aggregate more than 50 per cent of the equalized assessment of the electrical service area approve the proposed borrowing, the area municipalities comprising the electrical service area that approve the proposed borrowing shall apply to the Ontario Municipal Board for approval of the proposed borrowing on behalf of all the area municipalities comprising the electrical service area.

(4) Notwithstanding the failure or refusal of an area municipality to approve a borrowing under this section and subject to section 36 of *The Public Utilities Act*, each area municipality within an electrical service area is liable for such proportion of the payments required to be made on account of any borrowing under this section as the equalized assessment of the municipality bears to the equalized assessment of the electrical service area.

Responsibility of area municipalities
R.S.O. 1970, c. 390

6.—(1) Each commission established by section 2 shall file annually with the council of each area municipality in the electrical service area served by the commission a statement of the affairs of the commission and its capital borrowing forecast.

Financial statements

(2) The accounts of each commission established by section 2 shall be audited by such of the auditors of the area municipalities comprising the electrical service area served by the commission as may be jointly appointed by identical by-laws of the councils of the area municipalities.

Auditors

7.—(1) In this section, “transfer date”, when used in respect of an employee of a public utilities commission, hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Interpretation

(2) On or before the 31st day of December, 1977, each hydro-electric commission and public utilities commission in the electrical service areas and Ontario Hydro shall designate those of their employees who were employed in the distribution and supply of power in the electrical service areas on the 1st day of January, 1977, and who continued such employment until the 31st day of December, 1977 or until their transfer dates, as the case may be, and the commissions established by section 2 shall offer employment to the employees so designated.

Transfer of employees

Wages or
salaries

(3) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

Partici-
pation in
O.M.E.R.S.

(4) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* and the regulations under that Act apply to such person as a member of the System.

R.S.O. 1970,
c. 324

Supple-
mentary
agreements

(5) Where a person who accepts employment under this section with a commission established by section 2 is entitled to the benefit of a supplementary agreement between a hydro-electric commission or public utilities commission operating within an electrical service area and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission or public utilities commission.

Transfer of
pension
credits from
Ontario
Hydro plan

(6) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension
guarantee

(7) Notwithstanding subsection 4, a person who accepts employment under this section with a commission established by section 2 and who,

- (a) was employed by Ontario Hydro immediately before his transfer date; and

- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit to which he would have been entitled under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1977, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 4 shall be apportioned and paid as provided by the regulations.

- (8) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer. Group life insurance

- (9) On or before the 31st day of December, 1979, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section as a term of his employment, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before his transfer date. Idem

- (10) A person who accepts employment under this section shall continue to enjoy as a term of his employment the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits. Sick leave

- (11) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the electrical service areas by public utilities commissions and municipal hydro-electric commissions. Life insurance provided to pensioners

- (12) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

Special
circum-
stances

(13) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Dissolution
of existing
commissions
1972, c. 105

8. For the purposes of section 178 of *The Regional Municipality of Waterloo Act, 1972*, the 2nd day of January, 1978 is the date determined and designated by the Minister, and on that date the municipal hydro-electric commissions and public utilities commissions referred to therein are dissolved and the by-laws establishing them passed pursuant to section 38 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1970,
c. 390

Regulations

9. The Lieutenant Governor in Council may make regulations,

(a) for the purposes of subsection 8 of section 3 in respect of,

- (i) the method of determining the original cost of the facilities or of any facility or of any part of any facility,
- (ii) the allocation of the original cost of the facilities or of any facility or of any part of any facility,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
- (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
- (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
- (vii) the method of payment of the price of the facilities;

- (b) for the purposes of subsection 7 of section 7, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

10. This Act comes into force on the day it receives Royal ^{Commence-}Assent._{ment}

11. The short title of this Act is *The Waterloo Electrical* ^{Short title}
Service Areas Act, 1977.

BILL 55

An Act to establish Electrical
Service Areas in The Regional
Municipality of Waterloo

1st Reading

July 8th, 1977

2nd Reading

3rd Reading

THE HON. J. A. TAYLOR
Minister of Energy

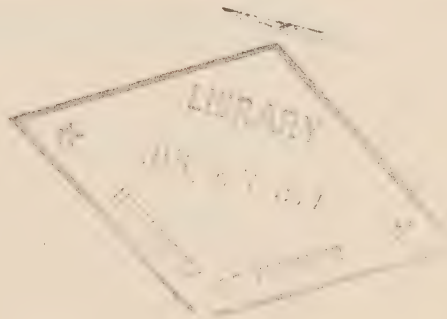
(Government Bill)

BILL 55

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to establish Electrical Service Areas in
The Regional Municipality of Waterloo**

THE HON. J. A. TAYLOR
Minister of Energy



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

BILL 55

1977

**An Act to establish
Electrical Service Areas in
The Regional Municipality of Waterloo**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "accumulated net retail equity" means the portion of the equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "area municipality" means an area municipality within the meaning of *The Regional Municipality of Waterloo Act, 1972*; ^{1972, c. 105}
- (c) "electrical service area" means an electrical service area established by subsection 1 of section 2;
- (d) "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (e) "power" means electrical power and includes electrical energy;
- (f) "regulations" means the regulations made under this Act.

2.—(1) On the day this Act comes into force, in The <sup>Electrical
service
areas</sup> Regional Municipality of Waterloo,

- (a) the area within the area municipalities of the City of Waterloo, the Township of Wellesley and the

Township of Woolwich is established as an electrical service area;

- (b) the area within the area municipalities of the City of Kitchener and the Township of Wilmot is established as an electrical service area; and
- (c) the area within the area municipalities of the City of Cambridge and the Township of North Dumfries is established as an electrical service area.

Commissions
established

R.S.O. 1970,
c. 390

R.S.O. 1970,
c. 354

(2) A hydro-electric commission for each of the electrical service areas established by subsection 1 is hereby established on the day this Act comes into force, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act* by the councils of the area municipalities comprising the electrical service area served by the commission acting in concert and a municipal commission within the meaning of *The Power Corporation Act*, and section 45 of *The Public Utilities Act* does not apply to the commissions.

Composition

1972, c. 95

(3) The commission for the electrical service area established by clause *a* of subsection 1 shall be known as the ESA-1 Hydro-Electric Commission and shall consist of the mayor of the City of Waterloo, the mayor of the Township of Woolwich, the mayor of the Township of Wellesley, three additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Waterloo, and one additional member who is a qualified elector under *The Municipal Elections Act, 1972* in the Township of Woolwich.

Idem

(4) The commission for the electrical service area established by clause *b* of subsection 1 shall be known as the ESA-2 Hydro-Electric Commission and shall consist of the mayor of the City of Kitchener, the mayor of the Township of Wilmot, four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Kitchener, and one additional member who is a qualified elector under *The Municipal Elections Act, 1972* in the Township of Wilmot.

Idem

(5) The commission for the electrical service area established by clause *c* of subsection 1 shall be known as the ESA-3 Hydro-Electric Commission and shall consist of the mayor of the City of Cambridge, the mayor of the Township of North Dumfries, and three additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Cambridge.

(6) The name of a commission may be changed by resolution of the commission to a name commencing with the words "Hydro-Electric Commission of". Names of commissions

(7) The additional members in respect of each area municipality shall be appointed on or before the 1st day of October, 1977 by the council of the area municipality from the members of the hydro-electric commissions and public utility commissions distributing and selling power within that municipality on the day this Act comes into force, to serve for a term expiring with the 31st day of December, 1978. Additional members of first commissions

(8) For terms commencing after the 31st day of December, 1978, the additional members in respect of each area municipality shall be elected by a general vote of the electors of the area municipality, unless before the 1st day of January, 1978 the council of the area municipality provides by by-law that the additional member or members in respect of that area municipality shall be appointed by the council. Additional members of subsequent commissions

(9) Members of the councils of the area municipalities comprising the electrical service area in respect of which a commission is established by subsection 2 may be appointed as members of the commission, but the members of the councils shall not form a majority of the commission. Eligibility of members of council

(10) A member of a commission shall hold office for the same term as the members of council or until his successor is elected or appointed. Term of office

(11) The council of an area municipality may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission. Delegates

(12) Where a vacancy in a commission occurs from any cause, the council of the area municipality in respect of which the person whose seat became vacant was elected or appointed shall immediately appoint a successor who shall hold office during the remainder of the term for which his predecessor was elected or appointed. Filling of vacancies

(13) Subject to the approval of Ontario Hydro, the salaries or other remuneration of the commissioners shall from time to time be fixed by the council of the area municipality in respect of which they are elected or appointed, and the salaries of the first commissioners shall be fixed on or before the 1st day of October, 1977 in an amount that does not exceed the highest salary paid to members of hydro-electric commissions and public utilities commissions operating in the Salary

- 1972, c. 105 Regional Area within the meaning of *The Regional Municipality of Waterloo Act, 1972* on the 1st day of January, 1977.
- Resignation (14) A resignation from a council by a member of the council who is a member of a commission established by subsection 2 shall be deemed to be a resignation from both the commission and the council.
- Powers of commissions
R.S.O. 1970, c. 390 **3.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1978, be exercised on behalf of the area municipalities comprising an electrical service area by the commission established by section 2 in respect of that electrical service area and not by the council of any area municipality or the council of The Regional Municipality of Waterloo or any other person or body.
- Idem (2) Subject to subsection 4 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy Board Act*, on and after the 1st day of January, 1978, each commission established by section 2 has the sole right to supply power within its electrical service area, and, on behalf of the area municipalities within its electrical service area, may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within its electrical service area without electoral assent or other approval or authorization and such a contract shall be deemed to be an agreement within the meaning of clause s of subsection 2 of section 293 of *The Municipal Act*.
- R.S.O. 1970, c. 284 (3) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the supply of power to the municipal corporation apply to each of the commissions established by section 2.
- Applica-
tion of
R.S.O. 1970, c. 354 (4) With the consent of a commission established by section 2, Ontario Hydro may supply power directly to customers within the electrical service area in respect of which the commission is established.
- Direct customers
- Transitional (5) Such management and control of works for the distribution and supply of power within the electrical service areas as are exercised by hydro-electric commissions, public utilities commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them

to and including the 31st day of December, 1977, but any of the assets, powers and responsibilities of such commissions may by agreement be transferred before that date to a commission established by section 2.

(6) On the 1st day of January, 1978, all assets under the control and management of and all liabilities of hydro-electric commissions and public utilities commissions distributing and selling power in an electrical service area to the extent that they pertain to the distribution and supply of power in the electrical service area are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the electrical service area.

Transfer of
assets and
liabilities

(7) The trustees of the police village of Baden as it existed on the 31st day of December, 1972 shall be deemed to have been established as a hydro-electric commission for the police village of Baden under Part III of *The Public Utilities Act* and the commission is dissolved on the 2nd day of January, 1978.

Baden
village
trustees
deemed
commission
R.S.O. 1970,
c. 390

(8) Subject to subsection 4 and the regulations, each commission established by section 2 shall acquire, on behalf of the area municipalities comprising the electrical service area served by the commission, the retail distribution facilities within its electrical service area used by Ontario Hydro on the 31st day of December, 1977 in the retail distribution of power including equipment leased by Ontario Hydro to retail customers within the electrical service area for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase of
retail distri-
bution
facilities
from
Ontario
Hydro

(9) If the price of the facilities referred to in subsection 8 has not been determined by the parties before the 1st day of July, 1978, the price shall be determined by arbitration by a single arbitrator pursuant to *The Arbitrations Act* in accordance with subsection 8 and the regulations and the decision of the arbitrator shall not be subject to appeal.

Where price
to be deter-
mined by
arbitration
R.S.O. 1970,
c. 25

4.—(1) All real property transferred pursuant to section 3 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be taken and held by the commission in trust for the area municipalities comprising the electrical service area served by the commission.

Vesting
of real
property

Disposition
of real
property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipalities comprising the electrical service area served by the commission, the real property may be disposed of as follows:

1. In the event that the area municipality in which the real property is located wishes in good faith to retain the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater and the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the area municipality in which the real property is located does not wish to retain the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the area municipalities comprising the electrical service area, and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be paid over to the commission and shall be applied in accordance with *The Public Utilities Act*.

R.S.O. 1970,
c. 390

Borrowing
1972, c. 105

5.—(1) Except as otherwise provided in this Act, sections 122, 133 to 135 and 137 to 155 of *The Regional Municipality of Waterloo Act, 1972* apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Request

(2) With the approval of Ontario Hydro, a commission established by section 2 may request the area municipalities comprising the electrical service area in respect of which the commission is established to approve the borrowing of money and the councils of the area municipalities shall approve or disapprove the borrowing within thirty days of the making of the request.

Approval

(3) Notwithstanding the failure or refusal of the council of an area municipality in an electrical service area in

respect of which a commission is established to approve a proposed borrowing, where one or more area municipalities whose equalized assessment is in the aggregate more than 50 per cent of the equalized assessment of the electrical service area approve the proposed borrowing, the area municipalities comprising the electrical service area that approve the proposed borrowing shall apply to the Ontario Municipal Board for approval of the proposed borrowing on behalf of all the area municipalities comprising the electrical service area.

(4) Notwithstanding the failure or refusal of an area municipality to approve a borrowing under this section and subject to section 36 of *The Public Utilities Act*, each area municipality within an electrical service area is liable for such proportion of the payments required to be made on account of any borrowing under this section as the equalized assessment of the municipality bears to the equalized assessment of the electrical service area.

Responsibility of area municipalities
R.S.O. 1970, c. 390

6.—(1) Each commission established by section 2 shall file annually with the council of each area municipality in the electrical service area served by the commission a statement of the affairs of the commission and its capital borrowing forecast.

Financial statements

(2) The accounts of each commission established by section 2 shall be audited by such of the auditors of the area municipalities comprising the electrical service area served by the commission as may be jointly appointed by identical by-laws of the councils of the area municipalities.

Auditors

7.—(1) In this section, “transfer date”, when used in respect of an employee of a public utilities commission, hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Interpretation

(2) On or before the 31st day of December, 1977, each hydro-electric commission and public utilities commission in the electrical service areas and Ontario Hydro shall designate those of their employees who were employed in the distribution and supply of power in the electrical service areas on the 1st day of January, 1977, and who continued such employment until the 31st day of December, 1977 or until their transfer dates, as the case may be, and the commissions established by section 2 shall offer employment to the employees so designated.

Transfer of employees

Wages or
salaries

(3) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

Partici-
pation in
O.M.E.R.S.

(4) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* and the regulations under that Act apply to such person as a member of the System.

R.S.O. 1970,
c. 324

Supple-
mentary
agreements

(5) Where a person who accepts employment under this section with a commission established by section 2 is entitled to the benefit of a supplementary agreement between a hydro-electric commission or public utilities commission operating within an electrical service area and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission or public utilities commission.

Transfer of
pension
credits from
Ontario
Hydro plan

(6) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension
guarantee

(7) Notwithstanding subsection 4, a person who accepts employment under this section with a commission established by section 2 and who,

- (a) was employed by Ontario Hydro immediately before his transfer date; and

- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit to which he would have been entitled under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1977, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 4 shall be apportioned and paid as provided by the regulations.

- (8) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer. Group life insurance

- (9) On or before the 31st day of December, 1979, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section as a term of his employment, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before his transfer date. Idem

- (10) A person who accepts employment under this section shall continue to enjoy as a term of his employment the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits. Sick leave

- (11) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the electrical service areas by public utilities commissions and municipal hydro-electric commissions. Life insurance provided to pensioners

- (12) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

Special
circum-
stances

(13) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Dissolution
of existing
commissions
1972, c. 105

8. For the purposes of section 178 of *The Regional Municipality of Waterloo Act, 1972*, the 2nd day of January, 1978 is the date determined and designated by the Minister, and on that date the municipal hydro-electric commissions and public utilities commissions referred to therein are dissolved and the by-laws establishing them passed pursuant to section 38 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1970,
c. 390

Regulations

9. The Lieutenant Governor in Council may make regulations,

(a) for the purposes of subsection 8 of section 3 in respect of,

- (i) the method of determining the original cost of the facilities or of any facility or of any part of any facility,
- (ii) the allocation of the original cost of the facilities or of any facility or of any part of any facility,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
- (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
- (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
- (vii) the method of payment of the price of the facilities;

- (b) for the purposes of subsection 7 of section 7, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

10. This Act comes into force on the day it receives Royal ^{Commence-}Assent._{ment}

11. The short title of this Act is *The Waterloo Electrical* ^{Short title}
Service Areas Act, 1977.

BILL 55

An Act to establish Electrical
Service Areas in The Regional
Municipality of Waterloo

1st Reading

July 8th, 1977

2nd Reading

July 12th, 1977

3rd Reading

July 12th, 1977

THE HON. J. A. TAYLOR
Minister of Energy

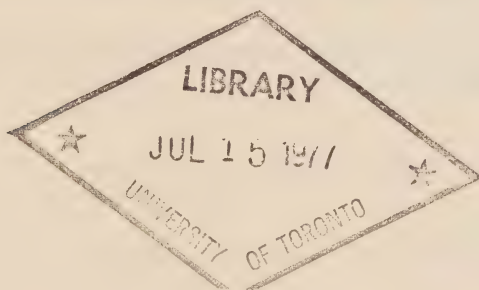
BILL 56

Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to provide for Municipal Hydro-Electric
Service in The Regional Municipality of Peel**

THE HON. J. A. TAYLOR
Minister of Energy



TORONTO

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EXPLANATORY NOTES

The Bill establishes new municipal hydro-electric commissions for the municipalities of Brampton and Mississauga, and renames the Bolton Hydro-Electric Commission as the Caledon Hydro-Electric Commission.

A transitional period is provided before the new commissions become fully operational.

The members of the Brampton and Mississauga commissions will be the mayor of the area municipality and four additional members qualified as municipal electors in the municipality.

The members of the Caledon Hydro-Electric Commission will be the mayor of Caledon and two additional members. The council of each area municipality will determine whether, after December 31st, 1978, the members of its commissions should be elected or appointed.

Customers within Brampton and Mississauga presently served by Ontario Hydro's rural retail power distribution system will be supplied with power by the new commissions.

Customers within Caledon presently served by Ontario Hydro will continue to be served by Ontario Hydro until the Caledon council directs the Caledon Hydro-Electric Commission to expand its service area to the municipal boundaries.

Provision is made for the transfer of employees and the protection of their salaries and benefits.

BILL 56

1977

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Peel

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) “accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “area municipality” means the area municipality of the City of Brampton, the Town of Caledon and the City of Mississauga, within the meaning of *The Regional Municipality of Peel Act, 1973*; ^{1973, c. 60}
- (c) “Minister” means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (d) “power” means electrical power and includes electrical energy;
- (e) “regulations” means the regulations made under this Act.

2.—(1) On the day this Act comes into force, a hydro-electric commission for each of the City of Brampton, the Town of Caledon and the City of Mississauga is hereby established, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act*, and a municipal commission within the meaning of *The Power Corporation Act*. Commissions
established

R.S.O. 1970,
cc. 390, 354

Composition (2) The commission for the City of Brampton established by subsection 1 shall be known as the Brampton Hydro-Electric Commission and shall consist of the mayor of the City of Brampton and four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Brampton.

1972, c. 95

Idem (3) The commission for the City of Mississauga established by subsection 1 shall be known as the Mississauga Hydro-Electric Commission and shall consist of the mayor of the City of Mississauga and four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Mississauga.

Idem (4) The commission for the Town of Caledon established by subsection 1 shall be known as the Caledon Hydro-Electric Commission and shall consist of the mayor of the Town of Caledon and two additional members who are qualified electors under *The Municipal Elections Act, 1972* in the Town of Caledon.

Additional
members
of first
commissions

(5) The additional members of the Brampton Hydro-Electric Commission established by subsection 1 for the term expiring with the 31st day of December, 1978, shall be the two members of the Brampton Public Utility Commission as it exists on the day this Act comes into force, other than the mayor of the City of Brampton, and two other persons appointed by the council of the City of Brampton, of whom at least one shall not be a member of the council.

Idem

(6) The additional members of the Mississauga Hydro-Electric Commission established by subsection 1, for the term expiring with the 31st day of December, 1978, shall be the two members of the Mississauga Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the City of Mississauga and other than the mayor of the former Town of Mississauga, one member appointed by the council of the City of Mississauga from among the members of the Streetsville Public Utility Commission as it exists on the day this Act comes into force, and one member appointed by the council of the City of Mississauga from among the members of the Port Credit Public Utilities Commission as it exists on the day this Act comes into force.

Idem

(7) The additional members of the Caledon Hydro-Electric Commission established by subsection 1, for the term expiring with the 31st day of December, 1978, shall be the two members of the Bolton Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the Town of Caledon.

(8) For terms commencing after the 31st day of December, 1978, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1978 the council of the area municipality provides by by-law that the additional members shall be appointed by the council. Additional members of subsequent commissions

(9) Members of the council of an area municipality served by a commission established by subsection 1 may be appointed as members of the commission, but the members of the council shall not form a majority of the commission. Eligibility of members of council

(10) A member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed. Term of office

(11) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission. Delegates

(12) The salaries of the members of the commissions established by subsection 1 for the term expiring with the 31st day of December, 1978 shall be fixed on or before the 1st day of April, 1978 in an amount that does not exceed the highest salary paid to members of hydro-electric commissions and public utilities commissions operating in the Regional Area within the meaning of *The Regional Municipality of Peel Act, 1973* on the 1st day of January, 1977. Salary of first commissions 1973, c. 60

(13) A resignation from the council of a member of a council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the commission and the council. Resignation

3.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1978, be exercised on behalf of the municipalities of the City of Brampton, the Town of Caledon and the City of Mississauga by the commission established by section 2 in respect of that municipality and not by the council of any municipality or any other body. Powers of commissions R.S.O. 1970, c. 390

(2) Subject to subsection 5 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy* Idem R.S.O. 1970, c. 312

Board Act, on and after the 1st day of January, 1978 each commission established by section 2 has the sole right to supply power within the area municipality in respect of which it is established, and, on behalf of the area municipality, may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within the municipality, without electoral assent or other approval or authorization and such contract shall be deemed to be an agreement within the meaning of clause s of subsection 2 of section 293 of *The Municipal Act*.

R.S.O. 1970,
c. 284

Where
Ontario
Hydro to
continue
to supply
power

(3) Notwithstanding subsection 2, but subject to subsections 10 and 12, Ontario Hydro shall continue to supply power in those areas of the Town of Caledon which it serves on the day this Act comes into force, and subsections 8 and 9 do not apply.

Application
of
R.S.O. 1970,
c. 354

(4) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the supply of power to the municipal corporation apply to each of the commissions established by section 2.

Direct
customers

(5) With the consent of a commission established by section 2, Ontario Hydro may supply power directly to customers within the municipality in respect of which the commission is established.

Transitional

(6) Such management and control of works for the distribution and supply of power within the municipalities of the City of Brampton and the City of Mississauga as are exercised by hydro-electric commissions, public utilities commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them to and including the 31st day of December, 1977, but any of the assets, powers and responsibilities of such commissions may by agreement be transferred before that date to a commission established by section 2.

Transfer of
assets and
liabilities

(7) On the 1st day of January, 1978, all assets under the control and management of and all liabilities of hydro-electric commissions and public utilities commissions distributing and selling power in the municipality of the City of Brampton, the Town of Caledon and the City of Mississauga, to the extent that they pertain to the distribution and supply of power in the municipality, are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the municipality.

(8) Subject to subsections 3 and 5 and the regulations, each commission established by section 2 shall acquire, on behalf of the area municipality served by the commission, the retail distribution facilities within the municipality used by Ontario Hydro on the 31st day of December, 1977 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the municipality for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase
of retail
distribution
facilities
from
Ontario
Hydro

(9) If the price of the facilities referred to in subsection 8 has not been determined by the parties before the 1st day of July, 1978, the price shall be determined by arbitration by a single arbitrator pursuant to *The Arbitrations Act* in accordance with subsection 8 and the regulations and the decision of the arbitrator shall not be subject to appeal.

Where
price to be
determined
by
arbitration
R.S.O. 1970,
c. 25

(10) The council of the Town of Caledon may by by-law direct the Caledon Hydro-Electric Commission to commence the distribution and supply of power, on a day specified by the council, in all areas of Caledon supplied with power by Ontario Hydro pursuant to subsection 3, and on the day specified, subsections 8 and 9 and section 6 apply with necessary modifications.

Power of
council to
direct supply
of power by
Caledon
Hydro-
Electric
Commission

(11) Until such time as the power conferred by subsection 10 has been exercised, the council of the Town of Caledon shall review the distribution and supply of power within the Town of Caledon at least once in every three calendar years, and shall determine by resolution whether the power conferred by subsection 10 should be exercised.

Review
by council

(12) If, in the course of a review referred to in subsection 11, the council of the Town of Caledon determines, in accordance with the regulations, that it is financially feasible for the Caledon Hydro-Electric Commission to distribute and supply power in the entire Town of Caledon, the council shall exercise the power conferred by subsection 10.

When
council to
exercise
power

4.—(1) All real property transferred pursuant to section 3 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be vested in the area municipality served by the commission.

Vesting
of real
property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real

Disposition
of real
property

property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the commission wishes in good faith to retain the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater and the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the area municipality served by the commission does not wish to retain the real property in accordance with paragraph 1, the area municipality shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality, and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be paid over to the commission and shall be applied in accordance with *The Public Utilities Act*.

R.S.O. 1970,
c. 390

Borrowing
1973, c. 60

5. Except as otherwise provided in this Act, sections 91 to 113 of *The Regional Municipality of Peel Act, 1973* apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

6.—(1) In this section, “transfer date”, when used in respect of an employee of a public utilities commission, hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1977, each hydro-electric commission and public utilities commission in the municipalities of the City of Brampton and the City of Mississauga and Ontario Hydro shall designate those of their employees who were employed in the distribution and supply of power in the municipalities on the 1st day of January, 1977, and who continued such employment until the 31st day of December, 1977 or until their transfer dates, as the case may be, and the commissions established by

section 2 in respect of those municipalities shall offer employment to the employees so designated.

(3) On or before the 31st day of December, 1977 the ^{Idem} Caledon Hydro-Electric Commission shall offer employment to each employee employed in the distribution and supply of power by the Bolton Hydro-Electric Commission on the 1st day of January, 1977, who continued such employment until the 31st day of December, 1977 or until his transfer date, as the case may be.

(4) A person who accepts employment under this section ^{Wages or salaries} is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

(5) Each commission established by section 2 shall be ^{Participation in O.M.E.R.S.} deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* ^{R.S.O. 1970. c. 324} applies to such person as a member of the System.

(6) Where a person who accepts employment under this ^{Supplementary agreements} section with a commission established by section 2 is entitled to the benefit of a supplementary agreement between a hydro-electric commission or public utilities commission operating within an area municipality and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission or public utilities commission.

(7) Where a person who accepts employment under this ^{Transfer of pension credits from Ontario Hydro plan} section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service

for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension
guarantee

(8) Notwithstanding subsection 5, a person who accepts employment under this section with a commission established by section 2 and who,

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit to which he would have been entitled under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1977, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 5 shall be apportioned and paid as provided by the regulations.

Group life
insurance

(9) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Idem

(10) On or before the 31st day of December, 1979, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the employee was entitled immediately before his transfer date.

Sick
leave

(11) A person who accepts employment under this section shall continue to enjoy as a term of his employment the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

(12) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the area municipalities by public utilities commissions and municipal hydro-electric commissions. Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

(14) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship. Special circumstances

7. For the purposes of section 135 of *The Regional Municipality of Peel Act, 1973*, the 1st day of January, 1978 is the date determined by the Minister in respect of the area within the municipalities of the City of Brampton, the Town of Caledon and the City of Mississauga, and on that date the municipal hydro-electric commissions and public utilities commissions supplying electrical power and energy in that area are dissolved and the by-laws establishing them passed pursuant to section 38 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required. Dissolution of existing commissions 1973, c. 60 R.S.O. 1970, c. 390

8. The Lieutenant Governor in Council may make regulations, Regulations

(a) for the purposes of subsection 8 of section 3 in respect of,

- (i) the method of determining the original cost of the facilities or of any facility or of any part of any facility,
- (ii) the allocation of the original cost of the facilities or of any facility or of any part of any facility,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,

- (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
 - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
 - (vii) the method of payment of the price of the facilities;
- (b) for the purposes of subsection 12 of section 3, in respect of criteria to determine financial feasibility for the distribution and supply of power;
- (c) for the purposes of subsection 8 of section 6, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Peel Municipal Hydro-Electric Service Act, 1977*.

BILL 56

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Peel

1st Reading

July 8th, 1977

2nd Reading

3rd Reading

THE HON. J. A. TAYLOR
Minister of Energy

(*Government Bill*)

BILL 56

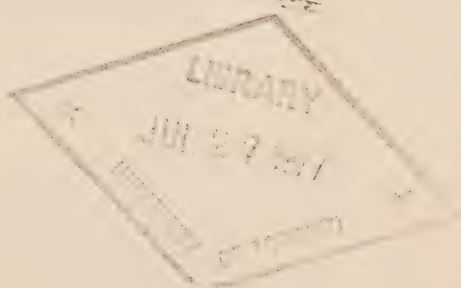
Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to provide for Municipal Hydro-Electric
Service in The Regional Municipality of Peel**

THE HON. J. A. TAYLOR
Minister of Energy

(Reprinted as amended by the Committee of the Whole House)



TORONTO

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EXPLANATORY NOTES

The Bill establishes new municipal hydro-electric commissions for the municipalities of Brampton and Mississauga, and renames the Bolton Hydro-Electric Commission as the Caledon Hydro-Electric Commission.

A transitional period is provided before the new commissions become fully operational.

The members of the Brampton and Mississauga commissions will be the mayor of the area municipality and four additional members qualified as municipal electors in the municipality.

The members of the Caledon Hydro-Electric Commission will be the mayor of Caledon and two additional members. The council of each area municipality will determine whether, after December 31st, 1978, the members of its commissions should be elected or appointed.

Customers within Brampton and Mississauga presently served by Ontario Hydro's rural retail power distribution system will be supplied with power by the new commissions.

Customers within Caledon presently served by Ontario Hydro will continue to be served by Ontario Hydro until the Caledon council directs the Caledon Hydro-Electric Commission to expand its service area to the municipal boundaries.

Provision is made for the transfer of employees and the protection of their salaries and benefits.

BILL 56

1977

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Peel

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) “accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “area municipality” means the area municipality of the City of Brampton, the Town of Caledon and the City of Mississauga, within the meaning of *The Regional Municipality of Peel Act, 1973*; ^{1973, c. 60}
- (c) “Minister” means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (d) “power” means electrical power and includes electrical energy;
- (e) “regulations” means the regulations made under this Act.

2.—(1) On the day this Act comes into force, a hydro-electric commission for each of the City of Brampton, the Town of Caledon and the City of Mississauga is hereby established, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act*, and a municipal commission within the meaning of *The Power Corporation Act*.

Commissions
established

R.S.O. 1970.
cc. 390, 354

- Composition (2) The commission for the City of Brampton established by subsection 1 shall be known as the Brampton Hydro-Electric Commission and shall consist of the mayor of the City of Brampton and four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Brampton.
- 1972, c. 95
- Idem (3) The commission for the City of Mississauga established by subsection 1 shall be known as the Mississauga Hydro-Electric Commission and shall consist of the mayor of the City of Mississauga and four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Mississauga.
- Idem (4) The commission for the Town of Caledon established by subsection 1 shall be known as the Caledon Hydro-Electric Commission and shall consist of the mayor of the Town of Caledon and two additional members who are qualified electors under *The Municipal Elections Act, 1972* in the Town of Caledon.
- Additional members of first commissions (5) The additional members of the Brampton Hydro-Electric Commission established by subsection 1 for the term expiring with the 31st day of December, 1978, shall be the two members of the Brampton Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the City of Brampton, and two other persons appointed by the council of the City of Brampton, of whom at least one shall not be a member of the council.
- Idem (6) The additional members of the Mississauga Hydro-Electric Commission established by subsection 1, for the term expiring with the 31st day of December, 1978, shall be the two members of the Mississauga Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the City of Mississauga and other than the mayor of the former Town of Mississauga, one member appointed by the council of the City of Mississauga from among the members of the Streetsville Public Utility Commission as it exists on the day this Act comes into force, and one member appointed by the council of the City of Mississauga from among the members of the Port Credit Public Utilities Commission as it exists on the day this Act comes into force.
- Idem (7) The additional members of the Caledon Hydro-Electric Commission established by subsection 1, for the term expiring with the 31st day of December, 1978, shall be the two members of the Bolton Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the Town of Caledon.

(8) For terms commencing after the 31st day of December, 1978, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1978 the council of the area municipality provides by by-law that the additional members shall be appointed by the council. Additional members of subsequent commissions

(9) Members of the council of an area municipality served by a commission established by subsection 1 may be appointed as members of the commission, but the members of the council shall not form a majority of the commission. Eligibility of members of council

(10) A member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed. Term of office

(11) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission. Delegates

(12) The salaries of the members of the commissions established by subsection 1 for the term expiring with the 31st day of December, 1978 shall be fixed on or before the 1st day of April, 1978 in an amount that does not exceed the highest salary paid to members of hydro-electric commissions and public utilities commissions operating in the Regional Area within the meaning of *The Regional Municipality of Peel Act, 1973* on the 1st day of January, 1977. Salary of first commissions 1973, c. 60

(13) A resignation from the council of a member of a council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the commission and the council. Resignation

3.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1978, be exercised on behalf of the municipalities of the City of Brampton, the Town of Caledon and the City of Mississauga by the commission established by section 2 in respect of that municipality and not by the council of any municipality or any other body. Powers of commissions R.S.O. 1970, c. 390

(2) Subject to subsection 5 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy* Idem R.S.O. 1970, c. 312

Board Act, on and after the 1st day of January, 1978 each commission established by section 2 has the sole right to supply power within the area municipality in respect of which it is established, and, on behalf of the area municipality, may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within the municipality, without electoral assent or other approval or authorization and such contract shall be deemed to be an agreement within the meaning of clause s of subsection 2 of section 293 of *The Municipal Act*.

R.S.O. 1970,
c. 284

Where
Ontario
Hydro to
continue
to supply
power

(3) Notwithstanding subsection 2, but subject to subsections 10 and 12, Ontario Hydro shall continue to supply power in those areas of the Town of Caledon which it serves on the day this Act comes into force, and subsections 8 and 9 do not apply.

Application
of
R.S.O. 1970,
c. 354

(4) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the supply of power to the municipal corporation apply to each of the commissions established by section 2.

Direct
customers

(5) With the consent of a commission established by section 2, Ontario Hydro may supply power directly to customers within the municipality in respect of which the commission is established.

Transitional

(6) Such management and control of works for the distribution and supply of power within the municipalities of the City of Brampton and the City of Mississauga as are exercised by hydro-electric commissions, public utilities commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them to and including the 31st day of December, 1977, but any of the assets, powers and responsibilities of such commissions may by agreement be transferred before that date to a commission established by section 2.

Transfer of
assets and
liabilities

(7) On the 1st day of January, 1978, all assets under the control and management of and all liabilities of hydro-electric commissions and public utilities commissions distributing and selling power in the municipality of the City of Brampton, the Town of Caledon and the City of Mississauga, to the extent that they pertain to the distribution and supply of power in the municipality, are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the municipality.

(8) Subject to subsections 3 and 5 and the regulations, each commission established by section 2 shall acquire, on behalf of the area municipality served by the commission, the retail distribution facilities within the municipality used by Ontario Hydro on the 31st day of December, 1977 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the municipality for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase
of retail
distribution
facilities
from
Ontario
Hydro

(9) If the price of the facilities referred to in subsection 8 has not been determined by the parties before the 1st day of July, 1978, the price shall be determined by arbitration by a single arbitrator pursuant to *The Arbitrations Act* in accordance with subsection 8 and the regulations and the decision of the arbitrator shall not be subject to appeal.

Where
price to be
determined
by
arbitration
R.S.O. 1970.
c. 25

(10) The council of the Town of Caledon may by by-law direct the Caledon Hydro-Electric Commission to commence the distribution and supply of power, on a day specified by the council, in all areas of Caledon supplied with power by Ontario Hydro pursuant to subsection 3, and on the day specified, subsections 8 and 9 and section 6 apply with necessary modifications.

Power of
council to
direct supply
of power by
Caledon
Hydro-
Electric
Commission

(11) Until such time as the power conferred by subsection 10 has been exercised, the council of the Town of Caledon shall review the distribution and supply of power within the Town of Caledon at least once in every three calendar years, and shall determine by resolution whether the power conferred by subsection 10 should be exercised.

Review
by council

(12) If, in the course of a review referred to in subsection 11, the council of the Town of Caledon determines, in accordance with the regulations, that it is financially feasible for the Caledon Hydro-Electric Commission to distribute and supply power in the entire Town of Caledon, the council shall exercise the power conferred by subsection 10.

When
council to
exercise
power

4.—(1) All real property transferred pursuant to section 3 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be vested in the area municipality served by the commission.

Vesting
of real
property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real

Disposition
of real
property

property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the commission wishes in good faith to retain the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater and the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the area municipality served by the commission does not wish to retain the real property in accordance with paragraph 1, the area municipality shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality, and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be paid over to the commission and shall be applied in accordance with *The Public Utilities Act*.

R.S.O. 1970,
c. 390

Borrowing
1973, c. 60

5. Except as otherwise provided in this Act, sections 91 to 113 of *The Regional Municipality of Peel Act, 1973* apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

6.—(1) In this section, “transfer date”, when used in respect of an employee of a public utilities commission, hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1977, each hydro-electric commission and public utilities commission in the municipalities of the City of Brampton and the City of Mississauga and Ontario Hydro shall designate those of their employees who were employed in the distribution and supply of power in the municipalities on the 1st day of January, 1977, and who continued such employment until the 31st day of December, 1977 or until their transfer dates, as the case may be, and the commissions established by

section 2 in respect of those municipalities shall offer employment to the employees so designated.

(3) On or before the 31st day of December, 1977 the Caledon Hydro-Electric Commission shall offer employment to each employee employed in the distribution and supply of power by the Bolton Hydro-Electric Commission on the 1st day of January, 1977, who continued such employment until the 31st day of December, 1977 or until his transfer date, as the case may be. Idem

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date. Wages or salaries

(5) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* applies to such person as a member of the System. Participation in O.M.E.R.S.
R.S.O. 1970, c. 324

(6) Where a person who accepts employment under this section with a commission established by section 2 is entitled to the benefit of a supplementary agreement between a hydro-electric commission or public utilities commission operating within an area municipality and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission or public utilities commission. Supplementary agreements

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service Transfer of pension credits from Ontario Hydro plan

for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension
guarantee

(8) Notwithstanding subsection 5, a person who accepts employment under this section with a commission established by section 2 and who,

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit to which he would have been entitled under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1977, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 5 shall be apportioned and paid as provided by the regulations.

Group life
insurance

(9) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Idem

(10) On or before the 31st day of December, 1979, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the employee was entitled immediately before his transfer date.

Sick
leave

(11) A person who accepts employment under this section shall continue to enjoy as a term of his employment the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

(12) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the area municipalities by public utilities commissions and municipal hydro-electric commissions. Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

(14) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship. Special circumstances

7. For the purposes of section 135 of *The Regional Municipality of Peel Act, 1973*, the 1st day of January, 1978 is the date determined by the Minister in respect of the area within the municipalities of the City of Brampton, the Town of Caledon and the City of Mississauga, and on that date the municipal hydro-electric commissions and public utilities commissions supplying electrical power and energy in that area are dissolved and the by-laws establishing them passed pursuant to section 38 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required. Dissolution of existing commissions 1973, c. 60 R.S.O. 1970, c. 390

8. The Lieutenant Governor in Council may make regulations, Regulations

(a) for the purposes of subsection 8 of section 3 in respect of,

- (i) the method of determining the original cost of the facilities or of any facility or of any part of any facility,
- (ii) the allocation of the original cost of the facilities or of any facility or of any part of any facility,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,

- (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
- (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
- (vii) the method of payment of the price of the facilities;
- (b) for the purposes of subsection 12 of section 3, in respect of criteria to determine financial feasibility for the distribution and supply of power;
- (c) for the purposes of subsection 8 of section 6, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Peel Municipal Hydro-Electric Service Act, 1977*.

BILL 56

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Peel

1st Reading

July 8th, 1977

2nd Reading

July 12th, 1977

3rd Reading

THE HON. J. A. TAYLOR
Minister of Energy

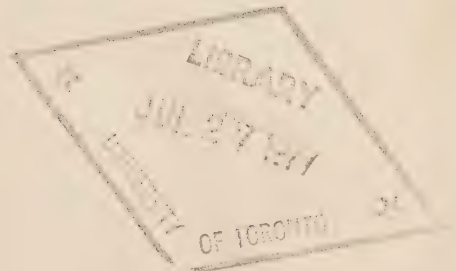
*(Reprinted as amended by the
Committee of the Whole House)*

BILL 56

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to provide for Municipal Hydro-Electric
Service in The Regional Municipality of Peel**

THE HON. J. A. TAYLOR
Minister of Energy



BILL 56

1977

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Peel

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "accumulated net retail equity" means the portion of the equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "area municipality" means the area municipality of the City of Brampton, the Town of Caledon and the City of Mississauga, within the meaning of *The Regional Municipality of Peel Act, 1973*; 1973, c. 60
- (c) "Minister" means the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs;
- (d) "power" means electrical power and includes electrical energy;
- (e) "regulations" means the regulations made under this Act.

2.—(1) On the day this Act comes into force, a hydro-electric commission for each of the City of Brampton, the Town of Caledon and the City of Mississauga is hereby established, and each commission shall be deemed to be a commission established under Part III of *The Public Utilities Act*, and a municipal commission within the meaning of *The Power Corporation Act*. Commissions
established

R.S.O. 1970,
cc. 390, 354

- Composition (2) The commission for the City of Brampton established by subsection 1 shall be known as the Brampton Hydro-Electric Commission and shall consist of the mayor of the City of Brampton and four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Brampton.
- 1972, c. 95
- Idem (3) The commission for the City of Mississauga established by subsection 1 shall be known as the Mississauga Hydro-Electric Commission and shall consist of the mayor of the City of Mississauga and four additional members who are qualified electors under *The Municipal Elections Act, 1972* in the City of Mississauga.
- Idem (4) The commission for the Town of Caledon established by subsection 1 shall be known as the Caledon Hydro-Electric Commission and shall consist of the mayor of the Town of Caledon and two additional members who are qualified electors under *The Municipal Elections Act, 1972* in the Town of Caledon.
- Additional members of first commissions (5) The additional members of the Brampton Hydro-Electric Commission established by subsection 1 for the term expiring with the 31st day of December, 1978, shall be the two members of the Brampton Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the City of Brampton, and two other persons appointed by the council of the City of Brampton, of whom at least one shall not be a member of the council.
- Idem (6) The additional members of the Mississauga Hydro-Electric Commission established by subsection 1, for the term expiring with the 31st day of December, 1978, shall be the two members of the Mississauga Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the City of Mississauga and other than the mayor of the former Town of Mississauga, one member appointed by the council of the City of Mississauga from among the members of the Streetsville Public Utility Commission as it exists on the day this Act comes into force, and one member appointed by the council of the City of Mississauga from among the members of the Port Credit Public Utilities Commission as it exists on the day this Act comes into force.
- Idem (7) The additional members of the Caledon Hydro-Electric Commission established by subsection 1, for the term expiring with the 31st day of December, 1978, shall be the two members of the Bolton Hydro-Electric Commission as it exists on the day this Act comes into force, other than the mayor of the Town of Caledon.

(8) For terms commencing after the 31st day of December, 1978, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1978 the council of the area municipality provides by by-law that the additional members shall be appointed by the council. Additional members of subsequent commissions

(9) Members of the council of an area municipality served by a commission established by subsection 1 may be appointed as members of the commission, but the members of the council shall not form a majority of the commission. Eligibility of members of council

(10) A member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed. Term of office

(11) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission. Delegates

(12) The salaries of the members of the commissions established by subsection 1 for the term expiring with the 31st day of December, 1978 shall be fixed on or before the 1st day of April, 1978 in an amount that does not exceed the highest salary paid to members of hydro-electric commissions and public utilities commissions operating in the Regional Area within the meaning of *The Regional Municipality of Peel Act, 1973* on the 1st day of January, 1977. Salary of first commissions 1973, c. 60

(13) A resignation from the council of a member of a council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the commission and the council. Resignation

3.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public Utilities Act* on a municipal corporation with respect to power, shall, on and after the 1st day of January, 1978, be exercised on behalf of the municipalities of the City of Brampton, the Town of Caledon and the City of Mississauga by the commission established by section 2 in respect of that municipality and not by the council of any municipality or any other body. Powers of commissions R.S.O. 1970, c. 390

(2) Subject to subsection 5 and to any subsisting contracts for the supply of power to customers within the meaning of subsection 1 of section 37a of *The Ontario Energy* Idem R.S.O. 1970, c. 312

Board Act, on and after the 1st day of January, 1978 each commission established by section 2 has the sole right to supply power within the area municipality in respect of which it is established, and, on behalf of the area municipality, may contract with Ontario Hydro for the transmission and supply to the commission of power to be distributed and sold within the municipality, without electoral assent or other approval or authorization and such contract shall be deemed to be an agreement within the meaning of clause s of subsection 2 of section 293 of *The Municipal Act*.

R.S.O. 1970,
c. 284

Where
Ontario
Hydro to
continue
to supply
power

(3) Notwithstanding subsection 2, but subject to subsections 10 and 12, Ontario Hydro shall continue to supply power in those areas of the Town of Caledon which it serves on the day this Act comes into force, and subsections 8 and 9 do not apply.

Application
of
R.S.O. 1970,
c. 354

(4) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the supply of power to the municipal corporation apply to each of the commissions established by section 2.

Direct
customers

(5) With the consent of a commission established by section 2, Ontario Hydro may supply power directly to customers within the municipality in respect of which the commission is established.

Transitional

(6) Such management and control of works for the distribution and supply of power within the municipalities of the City of Brampton and the City of Mississauga as are exercised by hydro-electric commissions, public utilities commissions and Ontario Hydro immediately before this Act comes into force remain entrusted to them to and including the 31st day of December, 1977, but any of the assets, powers and responsibilities of such commissions may by agreement be transferred before that date to a commission established by section 2.

Transfer of
assets and
liabilities

(7) On the 1st day of January, 1978, all assets under the control and management of and all liabilities of hydro-electric commissions and public utilities commissions distributing and selling power in the municipality of the City of Brampton, the Town of Caledon and the City of Mississauga, to the extent that they pertain to the distribution and supply of power in the municipality, are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the municipality.

(8) Subject to subsections 3 and 5 and the regulations, each commission established by section 2 shall acquire, on behalf of the area municipality served by the commission, the retail distribution facilities within the municipality used by Ontario Hydro on the 31st day of December, 1977 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the municipality for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase
of retail
distribution
facilities
from
Ontario
Hydro

(9) If the price of the facilities referred to in subsection 8 has not been determined by the parties before the 1st day of July, 1978, the price shall be determined by arbitration by a single arbitrator pursuant to *The Arbitrations Act* in accordance with subsection 8 and the regulations and the decision of the arbitrator shall not be subject to appeal.

Where
price to be
determined
by
arbitration
R.S.O. 1970.
c. 25

(10) The council of the Town of Caledon may by by-law direct the Caledon Hydro-Electric Commission to commence the distribution and supply of power, on a day specified by the council, in all areas of Caledon supplied with power by Ontario Hydro pursuant to subsection 3, and on the day specified, subsections 8 and 9 and section 6 apply with necessary modifications.

Power of
council to
direct supply
of power by
Caledon
Hydro-
Electric
Commission

(11) Until such time as the power conferred by subsection 10 has been exercised, the council of the Town of Caledon shall review the distribution and supply of power within the Town of Caledon at least once in every three calendar years, and shall determine by resolution whether the power conferred by subsection 10 should be exercised.

Review
by council

(12) If, in the course of a review referred to in subsection 11, the council of the Town of Caledon determines, in accordance with the regulations, that it is financially feasible for the Caledon Hydro-Electric Commission to distribute and supply power in the entire Town of Caledon, the council shall exercise the power conferred by subsection 10.

When
council to
exercise
power

4.—(1) All real property transferred pursuant to section 3 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission, shall be vested in the area municipality served by the commission.

Vesting
of real
property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real

Disposition
of real
property

property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the commission wishes in good faith to retain the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater and the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the area municipality served by the commission does not wish to retain the real property in accordance with paragraph 1, the area municipality shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality, and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor pursuant to this subsection shall be paid over to the commission and shall be applied in accordance with *The Public Utilities Act*.

R.S.O. 1970,
c. 390

Borrowing
1973, c. 60

5. Except as otherwise provided in this Act, sections 91 to 113 of *The Regional Municipality of Peel Act, 1973* apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

6.—(1) In this section, “transfer date”, when used in respect of an employee of a public utilities commission, hydro-electric commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1977, each hydro-electric commission and public utilities commission in the municipalities of the City of Brampton and the City of Mississauga and Ontario Hydro shall designate those of their employees who were employed in the distribution and supply of power in the municipalities on the 1st day of January, 1977, and who continued such employment until the 31st day of December, 1977 or until their transfer dates, as the case may be, and the commissions established by

section 2 in respect of those municipalities shall offer employment to the employees so designated.

(3) On or before the 31st day of December, 1977 the ^{Idem} Caledon Hydro-Electric Commission shall offer employment to each employee employed in the distribution and supply of power by the Bolton Hydro-Electric Commission on the 1st day of January, 1977, who continued such employment until the 31st day of December, 1977 or until his transfer date, as the case may be.

(4) A person who accepts employment under this section ^{Wages or salaries} is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

(5) Each commission established by section 2 shall be ^{Participation in O.M.E.R.S.} deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* ^{R.S.O. 1970. c. 324} applies to such person as a member of the System.

(6) Where a person who accepts employment under this ^{Supplementary agreements} section with a commission established by section 2 is entitled to the benefit of a supplementary agreement between a hydro-electric commission or public utilities commission operating within an area municipality and the Ontario Municipal Employees Retirement Board immediately before his transfer date, the commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the hydro-electric commission or public utilities commission.

(7) Where a person who accepts employment under this ^{Transfer of pension credits from Ontario Hydro plan} section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service

for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension
guarantee

(8) Notwithstanding subsection 5, a person who accepts employment under this section with a commission established by section 2 and who,

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of the commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit to which he would have been entitled under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1977, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 5 shall be apportioned and paid as provided by the regulations.

Group life
insurance

(9) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Idem

(10) On or before the 31st day of December, 1979, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the employee was entitled immediately before his transfer date.

Sick
leave

(11) A person who accepts employment under this section shall continue to enjoy as a term of his employment the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

(12) The commissions established by section 2 shall continue the provision of life insurance to pensioners formerly employed in the distribution and supply of power in the area municipalities by public utilities commissions and municipal hydro-electric commissions. Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

(14) Where, under this section, an employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship. Special circumstances

7. For the purposes of section 135 of *The Regional Municipality of Peel Act, 1973*, the 1st day of January, 1978 is the date determined by the Minister in respect of the area within the municipalities of the City of Brampton, the Town of Caledon and the City of Mississauga, and on that date the municipal hydro-electric commissions and public utilities commissions supplying electrical power and energy in that area are dissolved and the by-laws establishing them passed pursuant to section 38 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required. Dissolution of existing commissions 1973, c. 60

8. The Lieutenant Governor in Council may make regulations, Regulations

(a) for the purposes of subsection 8 of section 3 in respect of,

- (i) the method of determining the original cost of the facilities or of any facility or of any part of any facility,
- (ii) the allocation of the original cost of the facilities or of any facility or of any part of any facility,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,

- (v) the method of calculating accumulated depreciation or any component of accumulated depreciation,
- (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
- (vii) the method of payment of the price of the facilities;
- (b) for the purposes of subsection 12 of section 3, in respect of criteria to determine financial feasibility for the distribution and supply of power;
- (c) for the purposes of subsection 8 of section 6, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Peel Municipal Hydro-Electric Service Act, 1977*.

BILL 56

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Peel

1st Reading

July 8th, 1977

2nd Reading

July 12th, 1977

3rd Reading

July 12th, 1977

THE HON. J. A. TAYLOR
Minister of Energy

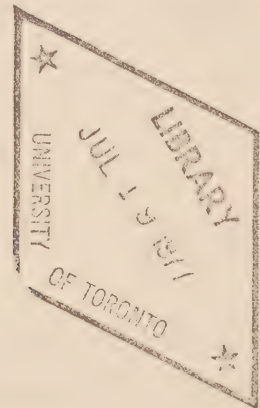
BILL 57

Private Member's Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

An Act to amend The Education Act, 1974

MR. ROY



EXPLANATORY NOTE

The purpose of this Bill is to permit the Languages of Instruction Commission of Ontario to resolve a dispute relating to language of instruction arising between a board of education and a French- or English-language advisory committee in cases where mediation involving the board and the advisory committee has failed.

BILL 57

1977

An Act to amend The Education Act, 1974

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 271 of *The Education Act, 1974*, being chapter 109, ^{s. 271, re-enacted} is repealed and the following substituted therefor:

271.—(1) Where a report of the mediator or mediators to ^{Duties of Commission} the Commission indicates failure to bring about an agreement, the Commission shall consider, inquire into and determine all pertinent aspects of the matter referred to mediation and shall issue its decision in writing to the Minister, the board and either the committee or the spokesman referred to in subsection 8 of section 269 setting forth a course of action that it considers appropriate to settle the matter.

(2) Subject to subsection 3, a decision of the Commission ^{Decision final and binding} is final and binding upon the board and either the committee or the group referred to in subsection 7 of section 269.

(3) A party to the mediation may appeal a decision of ^{Appeal lies to Minister} the Commission to the Minister within thirty days of the issuance of the decision and the Minister may consider, inquire into and determine all pertinent aspects of the matter referred to mediation and may affirm the decision of the Commission or make such other decision as he deems appropriate to settle the matter in dispute.

(4) *The Statutory Powers Procedure Act, 1971* does not ^{1971, c. 47, not to apply} apply to proceedings under this section.

2. This Act comes into force on the day it receives Royal Assent. ^{Commencement}
3. The short title of this Act is *The Education Amendment Act*, ^{Short title} 1977.

BILL 57

An Act to amend
The Education Act, 1974

1st Reading

July 8th, 1977

2nd Reading

3rd Reading

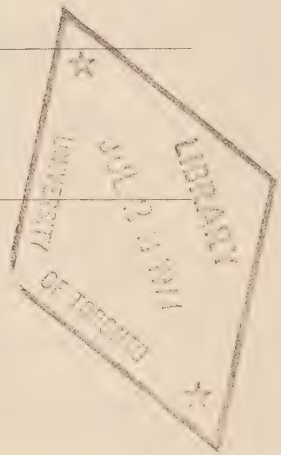
MR. ROY

(Private Member's Bill)

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to establish the Ontario Waste Disposal
and Reclamation Commission**

MR. NEWMAN
(Windsor-Walkerville)



EXPLANATORY NOTE

The Bill establishes the Ontario Waste Disposal and Reclamation Commission, to have authority in matters concerning disposal, reclamation and recycling of liquid, solid and gaseous wastes, with particular reference to possible development of energy from these sources.

BILL 58

1977

An Act to establish the Ontario Waste Disposal and Reclamation Commission

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "Commission" means the Ontario Waste Disposal and Reclamation Commission;

(b) "Minister" means the Minister of the Environment.

2.—(1) A Commission to be known as the "Ontario Waste Disposal and Reclamation Commission" is hereby established.

Commission
established

(2) The Commission shall be composed of not fewer than seven members appointed by the Lieutenant Governor in Council.

Composition

3. The Lieutenant Governor in Council may designate one of the members to be chairman of the Commission.

Chairman

4. Five members of the Commission constitute a quorum.

Quorum

5. The Lieutenant Governor in Council may fill any vacancy among the members of the Commission.

Vacancies

6.—(1) The objects of the Commission are and it has power,

Objects
and powers

(a) to provide waste disposal and reclamation services throughout the province, including incineration and landfill;

(b) to develop procedures and establish plants for the reclamation and recycling of paper, metal, glass and other materials;

(c) to study methods of marketing reclaimed materials;
and

(d) to provide waste collection services in areas where it
would be uneconomical for local authorities to do so.

Further
powers

(2) Subject to the approval of the Lieutenant Governor in Council, for the furtherance of its objects, the Commission may enter into agreements with universities, corporations or persons for the experimentation in methods of evaluating and reducing noise.

By-laws

7. The Commission may make such by-laws as are considered expedient for its constitution and the administration of its affairs, and may do such other things as are considered necessary or advisable to carry out its objects.

Annual
report

8. The Commission shall make a report annually to the Minister who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is *The Ontario Waste Disposal and Reclamation Commission Act, 1977*.

BILL 58

An Act to establish the Ontario Waste Disposal and Reclamation Commission

1st Reading

July 11th, 1977

2nd Reading

3rd Reading

MR. NEWMAN
(Windsor-Walkerville)

(Private Member's Bill)

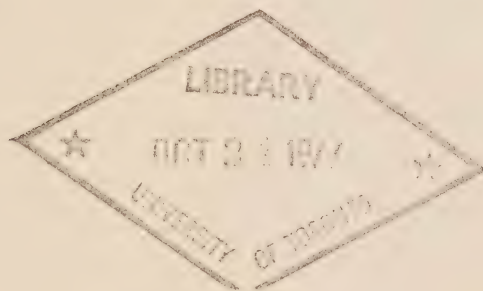
BILL 59

Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the Law respecting
Property Rights and Support Obligations between
Married Persons and in other Family Relationships**

THE HON. R. MCMURTRY
Attorney General



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EXPLANATORY NOTES

SECTION 1. The definition of "child" allows children born outside marriage and persons treated as a child of the family to claim support from their parents under Part II or to benefit from an order respecting property under section 5 (1) (*d*).

The definition of "court" permits claims under Parts I to IV to be brought in the new Unified Family Court, a provincial court (family division), a county or district court or the Supreme Court.

The definition of "parent" corresponds with the meaning of "child".

The definition of "spouse" ensures that parties to a marriage subsequently found to be void are covered by this Act.

BILL 59

1977

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

WHEREAS, it is desirable to encourage and strengthen Preamble
the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970,
c. 64
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;

- (d) “domestic contract” means a domestic contract as defined in Part IV;
- (e) “parent” means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;
- (f) “spouse” means either of a man and woman who,
- (i) are married to each other,
 - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity,
 - (iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension
of times

(5) The court may extend the time for bringing an application under this Act where the court is satisfied that,

SECTION 2. Subsection 1 permits a court to adjourn the hearing of a claim under this Act where it finds that all of the issues necessary for it to make a proper decision have not been determined. For example, an application to divide property could be adjourned to allow the bringing of a support application, and the two applications could be heard together.

Subsection 2 requires all claims under this Act between the same parties to be brought in the same court, and allows the transfer of an application to another court if the first court does not have jurisdiction to deal with all the issues.

Subsection 5 allows a court to permit an application after the time period prescribed by the Act expires.

Subsection 7 allows the court to make orders on the consent of the parties, without the need for a hearing.

Subsection 9 provides that a domestic contract (marriage contract, cohabitation agreement or separation agreement) made under Part IV prevails over the provisions of Parts I to III, subject to the limitation of sections 18 (3) and 55.

SECTION 3. The provincial court (family division) does not have jurisdiction under this Part.

The definition of "family assets" includes property held for the benefit of a spouse by a corporation, trust, power of appointment or revocable gift. The definition does not include land around the matrimonial home where that land is used for farming or other business purposes and is not reasonably necessary to the use of the home as a residence. The definition also excludes any property specified in a domestic contract as not being a family asset.

- (a) there are *prima facie* grounds for relief;
- (b) the delay has been incurred in good faith and has resulted from circumstances not reasonably within the control of the applicant; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

PART I

FAMILY PROPERTY

3. In this Part,

Interpretation

- (a) “court” means a court as defined in section 1 but does not include a provincial court (family division);
- (b) “family assets” means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,
 - (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,

- (ii) where property owned by a corporation or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

- (c) “property” means real or personal property or any interest therein.

Division of
family
assets

4.—(1) Subject to subsection 3, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 6.

Application
to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Variation
of division

(3) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to,

- (a) any agreement other than a domestic contract;

SECTION 4. This section gives a spouse the right to have the family assets divided where the marriage has broken down. The division can be accomplished by agreement or by court order. The family assets will be divided equally notwithstanding which spouse is the owner of them, even though that ownership has been determined under section 6, unless one of the spouses can satisfy the court that an equal division of family assets would be inequitable in view of the enumerated factors. Once satisfied, the court can divide the family assets unequally or divide other property of the spouse, including business property. The underlying purpose of the section is set out in subsection 5.

SECTION 5 allows an application to court to determine the mechanics of the division of the family assets or other property subject to division. The powers of the court include the power to order partition or sale. Recourse to *The Partition Act* will be unnecessary.

- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(4) Where, in the opinion of the court, a spouse has unreasonably impoverished the family assets or the result of a division of the family assets would be inequitable in all the circumstances having regard to the considerations set out in clauses *a* to *f* of subsection 3, the court may make a division of any property that is not a family asset.

Property
other than
family
assets

(5) The purpose of this section is to recognize that inherent in the marital relationship there is mutual contribution by the spouses, whether financial or otherwise, to the family welfare, entitling each spouse to an equal division of the family assets upon termination of the marriage, subject to the equitable considerations set out in subsections 3 and 4.

Purpose

5. In an application under section 4, the court may order, *Idem*

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and

- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

Determin-
ation of
questions of
title between
married
persons

6. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 5, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

Contribution
to property

7. Where one spouse or former spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order,

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

SECTION 6. This section is based on and replaces section 12 of *The Married Women's Property Act*. It allows applications to determine ownership or the right to possession of particular pieces of property, and is not restricted to a marriage breakdown situation. This section is not available where an application under section 4 has been made in respect of the same property. The court may order compensation for a spouse if the other has disposed of the property in question. The court has the power to order partition, so that recourse to *The Partition Act* will not be necessary.

SECTION 7. Is based on section 1 (3) (c) of *The Family Law Reform Act, 1975* and extends that provision so as to allow the court to recognize the spouse's contribution to particular property.

SECTION 9. This section provides a mechanism for enforcing an order charging property.

SECTION 11. This provision formerly appeared as section 1 (3) (d) of *The Family Law Reform Act, 1975*.

SECTION 12. This Part applies to persons married and to property owned when this Act comes into force, except where the spouses have already started a court proceeding over property rights.

8. In or pending an application under section 4, 6 or 7, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property. Interim orders for preservation

9. Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. Realization of security

10. Where an order made under this Part affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office. Registration of orders

11.—(1) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that, Presumptions

(a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have a one-half beneficial interest in the property; and

(b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause a. 1975, c. 41, s. 1 (3) (d), *amended*.

(2) Subsection 1 applies notwithstanding that the event giving rise to the presumption occurred before this section comes into force. Application

12. This Part applies notwithstanding that, Application of Part

(a) the spouses entered into the marriage before this Part comes into force; or

(b) the property in issue was acquired before this Part comes into force,

but does not apply in respect of property rights to which a claim has been made in a proceeding that was commenced before this Part comes into force.

Conflict
of laws

13.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

PART II

SUPPORT OBLIGATIONS

Interpre-
tation

14. In this Part,

(a) “dependant” means a person to whom another has an obligation to provide support under this Part;

(b) “spouse” means a spouse as defined in section 1, and includes,

(i) either of a man and woman not being married to each other who have cohabited,

1. continuously for a period of not less than five years, or

2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

(ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

Obligation
of spouses
for support

15. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

SECTION 13. This Part will apply to spouses who do not have a marriage contract [see section 2 (9)] and whose last common habitual residence was in Ontario or who never had a common habitual residence. Where the spouses' last common habitual residence was outside Ontario, the ownership of their movable property and their right to divide family assets will be governed by the law of that other jurisdiction.

The ownership of spouses' land is governed by the law of the place where the land is situated. Where this Part applies to the spouses, land outside Ontario cannot be ordered sold or partitioned by the court. However, the court can take the value of that land into account and give a smaller share of movable property or land in Ontario to the spouse who owns the foreign land, in order to adjust the division of family assets.

SECTION 14. The definition of "spouse" is broadened to include a "common law" spouse as defined.

SECTION 15. This section creates an obligation on spouses to be self-supporting and to support the other spouse, depending on ability to provide support and the needs of the other spouse. Matrimonial misconduct will no longer be the basis for making or denying an award of support, but see section 18 (5).

SECTION 16. The parental obligation to support a child is extended beyond the age of 16 years where the child is unable to provide himself with necessities of life because of illness, disability or other cause, which would include attendance at school or university, where reasonable. This wording is borrowed from the *Divorce Act* (Canada).

SECTION 17. A corresponding obligation is placed on children over the age of 18 to support their parents when in need, in accordance with ability. This section replaces the existing *Parents' Maintenance Act*, which imposes a similar obligation.

SECTION 18. A parent, or a public agency or children's aid society providing welfare or family benefits will be able to claim support for a dependant.

Subsection 4 contains a check-list to assist the court in determining the needs of the dependant and the ability to pay of the person from whom support is claimed. The court is directed to take into consideration any loss of earning capacity or opportunity for advancement occasioned by the responsibilities assumed during cohabitation and may include assistance to a spouse to attain financial independence.

16. Every parent has an obligation, to the extent the parent is capable of doing so, to provide education and support, in accordance with need, for his or her child who is unmarried and, Obligation of parent to support child

- (a) is under the age of sixteen years ; or
- (b) is of the age of sixteen years or over and in the charge of a parent but unable, by reason of illness, disability or other cause, to withdraw from the charge of his or her parents or to provide himself or herself with necessities.

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. Obligation of child to support parent

18.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or by, Applicants

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof; or
- (c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

(3) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection 1 notwithstanding that the contract or agreement contains an express provision excluding the application of this section, Setting aside domestic contract

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money ; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-
ation of
amount

(4) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;
- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation; and
- (m) any other source of support for the dependant other than out of public money.

SECTION 19. The court has broad powers to make the most suitable order or combination of orders regarding support, including the making of both periodic and lump sum orders and the granting of security to ensure payments. The court can also order the respondent to reimburse a public agency for payments it has made to the dependant. The court can provide for the dependant's support after the respondent's death.

If the order is not expressed to survive the respondent, it terminates on death and only 12 months arrears are enforceable.

A support order may be assigned to a public agency paying benefits to the dependant. This allows the agency to continue the steady income of the dependant and leaves the burden of enforcement and the risk of non-payment on the agency.

(5) The obligation to provide support exists without regard ^{Conduct} to the conduct of the spouse requiring the support, but the court may limit the amount of support having regard to a course of conduct that is an obvious and gross repudiation of the relationship.

19.—(1) In an application under section 18, the court ^{Powers of court} may order,

(a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or (limited period, or until the happening of a specified event;

(b) a lump sum to be paid or held in trust;

(c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;

(d) any matter authorized to be ordered under clauses *a* to *d* of subsection 1 of section 45 and subject to subsection 3 thereof;

(e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;

(f) the payment of support to be made in respect of any period before the date of the order;

(g) the payment to an agency referred to in subsection 2 of section 18 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order;

(h) the payment of expenses in respect of the pre-natal care and birth of a child;

(i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;

(j) that a spouse who has a policy of life insurance as defined in Part V of *The Insurance Act* design- ^{R.S.O. 1970, c. 224}

nate the other spouse or a child as the beneficiary irrevocably; and

(k) the securing of payment under the order, by a charge on property or otherwise.

Limitation
on
jurisdiction
of family
court

(2) A provincial court (family division) shall not make an order under clause *b*, *c* or *j* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment
of support

(4) An order for support is assignable to an agency referred to in subsection 2 of section 18.

Termination
of support
order on
death

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate.

Effect of
divorce
proceedings
R.S.C. 1970,
c. D-8

20.—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court.

Idem

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms.

Review and
variation
of orders

21.—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 2 of section 18, discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18.

SECTION 20. To avoid having the issue of support before two different courts, an application under this Part is stayed when a divorce is sought and any support order will be made under the *Divorce Act* (Canada). Where support is not before the trial judge as an issue in a divorce, an order under this Part survives the divorce. Under existing law, provincial orders in favour of a child continue but those in favour of a spouse do not.

SECTION 21. An order for support may be varied or ended if there has been a material change of circumstances or new evidence becomes available. The court also has power to wipe out arrears and interest.

If the original order was made by a county or district court, both the original court and another county or district court have jurisdiction to vary the order. The same provision is available for variation by one provincial court (family division) of an order made by another provincial court (family division).

This section applies to the variation of support orders made before this Act takes effect.

SECTION 22. A proposed sale of assets that would defeat a claim or an order for payment of support may be restrained by court order.

SECTION 23. Disclosure of financial information will be required of both the applicant and the person from whom support is claimed in order to ascertain need and ability to pay. The court will have discretion to make the disclosure confidential.

SECTION 25. Where appropriate, a provincial court (family division) or the Unified Family Court can make a provisional order against a respondent who lives outside the judicial district and who fails to appear at the hearing. The order is sent to the court having jurisdiction where the respondent lives and has no effect unless that court confirms it. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

(2) An application under subsection 1 shall be made to Court the court that made the order or to a co-ordinate court in another part of Ontario.

(3) No application under subsection 1 shall be made within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court. Limitation on applications for review

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force. Existing orders

22. In or pending an application under section 18 or appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support. Restraining orders

23.—(1) Where an application is made under section 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court. Statement of financial affairs

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record. Order for sealing statement

24. Where an application is made under section 18 or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor. Arresting respondent or debtor

25.—(1) Where an application is made under section 18 or 21 in a provincial court (family division) or the Unified Family Court and, Provisional orders

- (a) the respondent in the application fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and

- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission
for hearing

- (2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show
cause

- (3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

Confirmation
of order

- (4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence.

Adjournment
for further
evidence

- (5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose.

Where order
not confirmed

- (6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper.

Certificates
as
evidence

- (7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or

SECTION 26. In order to start a support application or to enforce a support order, the applicant may obtain an order requiring a person such as an employer or public agency, including the Province of Ontario, to provide access to its records for the sole purpose of obtaining the address of a person ordered to pay support.

SECTION 27. This section allows support orders made in any court to be filed for enforcement in the new Unified Family Court or the provincial court (family division). It replaces section 25 of *The Provincial Courts Act*. This section recognizes the administrative practice whereby court officials automatically enforce orders in family court.

The provincial court (family division) will have power to enforce support orders by execution and garnishment. Formerly support orders were enforceable in small claims court only up to the monetary jurisdiction of that court.

Garnishee and attachment orders may be obtained against the Crown for support.

signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy.

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. Right of appeal

26.—(1) Where it appears to a court that,

Access to records

(a) for the purpose of bringing an application under this Part; or

(b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

(2) This section binds the Crown in right of Ontario.

Section binds Crown

27.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario or other persons or agency mentioned in subsection 2 of section 18 and upon the filing of such material as is prescribed by the rules may enforce the order. Enforcement of orders by family court clerk

(2) A provincial court (family division) and the judges thereof have the power to issue execution and garnishment and enforce orders under subsection 1 in the same manner as small claims courts and the judges thereof, but without monetary limitation. Powers of court for enforcement

(3) Notwithstanding section 25 of *The Proceedings Against the Crown Act*, an attachment under subsection 1 of section 30 and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown. Crown subject to attachment for support R.S.O. 1970, c. 365

Examination
of debtor

28.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

- (a) to file a statement of financial information referred to in section 23;
- (b) submit to an examination as to assets and means; and
- (c) appear before the court to explain the default.

Compelling
attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

Penalty
for
default

29.—(1) Where the debtor fails to satisfy the court that the default is owing to his inability to pay, the court may order imprisonment for a term of not more than three months.

Conditions
of sentence

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and the order for imprisonment may provide for the imprisonment to be served intermittently.

Attachment
of wages

30.—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply.

R.S.O. 1970,
c. 486

Priority
of order

(2) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order.

Security
for
payment

31. Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or charge any property of the debtor therewith.

SECTION 28. Where a debtor under an order defaults, the debtor can be required to disclose financial particulars and appear before the court to explain the default. The debtor can be arrested if about to abscond. This procedure is adapted from *The Deserted Wives' and Children's Maintenance Act*.

SECTION 29. This procedure exists under *The Deserted Wives' and Children's Maintenance Act*. The power to imprison is made flexible enough to allow for a conditional or intermittent sentence.

SECTION 30. This section is new. It allows a court order for a continuing deduction at source by the employer in order to satisfy a support order. The attachment would have priority over any other seizure of wages. See also sections 76 and 84.

SECTION 32. This section provides a mechanism for enforcing a secured support order by selling the security.

SECTION 33. While living together, either spouse may pledge the credit of the other for necessities unless this authority is specifically withdrawn by notice to the creditor. Both spouses are then jointly liable to the creditor. Similarly, under subsection 2, a creditor may recover necessities provided to a child under 16 from both the parents and the child. The liability as between the spouses, or between parent and child, is determined in accordance with need and ability to pay as set out in sections 15, 16 and 17.

Subsection 4 abolishes the common law agency of cohabitation and agency of necessity, which applied only in favour of a wife.

SECTION 34. This section provides a civil remedy to prevent a spouse from continually harassing and interfering with the other.

SECTION 35. This section provides for the making of a custody order or interim order in favour of either parent in the best interests of the child. The custody order need not be tied to a support order, as is now the case under section 3 of *The Deserted Wives' and Children's Maintenance Act*.

32. Where a court orders security for the payment of support under this Part or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. Realization of security

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, except where the spouse has notified the third party that he or she has withdrawn the authority. Pledging credit for necessities

(2) Where a person is entitled to recover against a minor under sixteen years of age in respect of the provision of necessities for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor. Liability for necessities of minor

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support. Recovery between persons jointly liable

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband. Common law supplanted

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate. Order restraining harassment

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order. Custody of children

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario. Court

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate. Interim orders

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*. Application to orders under R.S.O. 1970, c. 128

Appeal
from
provincial
court (family
division)

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated.

Contempt
of orders of
provincial
court (family
division)

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed three months.

Conditions
of
imprison-
ment

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

PART III

MATRIMONIAL HOME

Interpre-
tation

38. In this Part, “property” means real or personal property.

Matrimonial
home

39.—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

More
than one
matrimonial
home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

Ownership
of shares

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Residence
on farm-
land, etc.

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Right to
possession

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Termination
of right to
possession

(2) Subject to an order of the court under this or any other Act, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

SECTION 36. Appeals are provided for in Acts governing the Supreme Court and county courts. This section is necessary because *The Provincial Courts Act* does not contain provisions for appeals. The appeal procedure will be set out in the rules.

SECTION 37. This section gives a provincial court (family division) the power to punish contempt of its orders under this Part. The Supreme Court and county courts already have such power.

SECTION 38. This Part extends to mobile homes, trailers, houseboats, etc.

SECTION 39. Where the family has or had two or more homes, this Part applies to all the family residences, subject to section 41. The definition of "matrimonial home" includes a home rented by the family and a unit in a co-operative housing development.

Where the property on which a matrimonial home is used for a purpose that is more than residential, such as for farming or other business purposes, only the surrounding land reasonably necessary for use of the residence is affected by this Part.

SECTION 40. Notwithstanding which spouse owns the home, both spouses are equally entitled to possession. The equal right to possession may be altered by a court order under section 45.

SECTION 41. The spouses may jointly designate one or more properties as matrimonial homes, and thereupon this Part ceases to apply to any property other than those designated. The designation must be registered.

SECTION 42. A spouse may not sell, lease, mortgage or otherwise deal with the matrimonial home unless the non-owning spouse's consent in writing is obtained, a court dispenses with the consent under section 44 or another home has been designated as the matrimonial home. If a spouse deals with the home without consent, the transaction can be set aside unless an innocent third party holds the interest at that time. The affidavit of a spouse is sufficient protection for a bona fide purchaser.

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home. Registered designation of matrimonial home

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument. Extent of designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration or deposit of, Cancellation of designation

(a) an instrument in the form prescribed by the regulations executed by both spouses;

(b) a decree absolute of divorce or judgment of nullity;

(c) an order under section 45 cancelling the designation; or

(d) proof of death of one of the spouses.

(4) Upon the cancellation of the designation of a property under subsection 3, the property ceases to be a matrimonial home under section 39. Effect of cancellation

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home. Revival of matrimonial homes

42.—(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless, Alienation of matrimonial home

(a) the other spouse joins in the instrument or consents to the transaction;

(b) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home;

(c) the property is not designated as a matrimonial home under section 41 and an instrument designating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

Setting
aside
transaction

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

Proof that
property
not a
matrimonial
home

(3) For the purposes of subsection 2, an affidavit of the person making the disposition or encumbrance,

- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
- (b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home; or
- (c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled,

shall, in the absence of actual notice by a spouse to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

Liens
arising by
operation
of law
R.S.O. 1970,
c. 239

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of *The Legal Aid Act*.

Right of
redemption
and to
notice

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

SECTION 43. The non-owning spouse is protected by requiring landlords, mortgagees and other lienholders to accept payment from and give notice to that spouse as if he or she were an owner.

SECTION 45. The court has power to grant exclusive possession of part or all of the home and contents, but is not to exercise the power unless satisfied that other provision for shelter is inadequate in the circumstances.

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Effect of
payments
made by
spouse

44. The court may, on the application of a spouse or person having an interest in property, by order,

Powers of
court
respecting
alienation

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and
- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home without the required consent and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order,

Order for
possession of
matrimonial
home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic

payments to the other spouse as is prescribed in the order;

- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false declaration is given under subsection 3 of section 42, direct the substitution of other real property for the matrimonial home or the setting aside of money or security to stand in place thereof, subject to such terms and conditions as the court considers appropriate.

Temporary
possession

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act.

Order
where no
property
interest

(3) An order for exclusive possession under subsection 1 shall not be made in favour of a spouse unless, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation
on
jurisdiction
of family
court

(4) A provincial court (family division) shall not make an order under clause *b* or *d* of section 44 or clause *e* or *f* of subsection 1.

Variation
of order

46. Upon the application of a person named in an order made under clause *a*, *b*, *c* or *d* of subsection 1 of section 45 and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Interim
order for
preservation
of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration
of order
R.S.O. 1970,
c. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

SECTION 48. An order for possession may be registered against the land so as to provide notice to third parties.

SECTION 49. This Part applies to all matrimonial homes in Ontario, whether or not the spouses have a marriage contract (see section 55) and whether or not the spouses are otherwise subject to Ontario property law (see section 12). This Part covers persons married and matrimonial homes acquired before this Act comes into force, except where a spouse has applied for an order for possession before this Act is in effect.

SECTIONS 50 TO 53. This Part overcomes the common law rule which held that marriage contracts contemplating a future separation or divorce were void.

The sections create a general category called “domestic contracts”, which is made up of marriage contracts, cohabitation agreements and separation agreements. Cohabitation agreements are akin to marriage contracts, but the parties are not married. Only a separation agreement may provide for custody of or access to children.

Court approval must be given to the marriage contract of a minor capable of entering into a marriage. Similarly, court approval is required where a committee enters into a domestic contract on behalf of a spouse who becomes mentally incompetent.

49.—(1) This Part applies to matrimonial homes that are ^{Application of Part} situated in Ontario.

(2) This Part applies notwithstanding that, Idem

- (a) the spouses entered into the marriage before this Part comes into force; or
- (b) the matrimonial home was acquired before this Part comes into force,

but does not apply to proceedings respecting possession of a matrimonial home that were commenced before this Part comes into force.

PART IV

DOMESTIC CONTRACTS

50. In this Part, Interpre-
tation

- (a) “cohabitation agreement” means an agreement entered into under section 52;
- (b) “domestic contract” means a marriage contract, separation agreement or cohabitation agreement;
- (c) “marriage contract” means an agreement entered into under section 51;
- (d) “separation agreement” means an agreement entered into under section 53.

51. Two persons may enter into an agreement, before ^{Marriage contracts} their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Cohabitation
agreements

52.—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Effect of
marriage on
agreement

(2) Where the parties to an agreement entered into under subsection 1 subsequently marry, the agreement continues in force subject to any further agreement under this Part.

Separation
agreements

53. A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs.

Form of
contract

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement
on behalf of
mentally
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or

SECTION 55. Before separation, a spouse may not contract out of the right to control dealings with the matrimonial home or obtain possession of it. Any provision in a domestic contract respecting a child is to be enforced only if in the child's best interests. Subsection 3 invalidates a *dum casta* clause. See also section 18 (3).

Domestic contracts will also be invalid for any reason that would void another kind of contract, such as fraud, duress or undue influence.

Where a provision is held void, the court will determine under the ordinary law of contract whether the provision can be severed so as to allow enforcement of the remainder of the contract.

SECTION 56. Where a third party makes a gift to either or both spouses, subject to the condition that they do not dispose of it without his consent, and this provision is contained in a marriage contract, the person making the gift can enforce the provision notwithstanding that he was not a party to the original contract.

SECTION 57. A marriage contract may be subject to foreign law. If it is valid under either the foreign law or Ontario law, it will be recognized in Ontario. However, no marriage contract will be enforced to the extent that it contradicts section 55 or 18 (3).

SECTION 58. This section replaces the provisions for affiliation agreements formerly found in Part III of *The Child Welfare Act*. That Part is repealed by section 73.

give any waiver or consent under this Act on behalf of the mentally incompetent person.

55.—(1) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void. Rights re matrimonial home excepted

(2) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child. Subject to best interests of child

(3) A provision in a separation agreement whether made before or after this section comes into force whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another. Dum casta clauses

56. Where a domestic contract provides that specific gifts made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision. Rights of donors of gifts

57. The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that, Contracts made outside Ontario

(a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario; and

(b) subsection 3 of section 18 and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario.

58.—(1) Where a man and a woman who are not spouses enter into an agreement for the payment of the expenses of prenatal care and birth in respect of a child or for the support of a child or for both, on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part. Paternity agreements

(2) Where an application is made under subsection 1 and a judge of the court is satisfied that the respondent is 1 Absconding respondent

about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent.

Application
to
pre-existing
agreements

(3) This section applies to agreements referred to in subsection 1 that were made before this Part comes into force.

Application
of Act to
pre-existing
contracts

59.—(1) A separation agreement or marriage contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts
entered into
before
Part comes
into force

(2) Where a domestic contract is entered into in accordance with this Part before this Part comes into force and,

- (a) the contract or any part would be valid if entered into after this Part comes into force; and
- (b) the contract or part is entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before this Part comes into force.

Idem

(3) Where pursuant to an understanding or agreement entered into before this Part comes into force by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

Right of
dependants
to sue in
tort

60.—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

Contributory
negligence

(2) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New*.

SECTION 59. Separation agreements and marriage contracts entered into before this Act comes into force are valid, and subsisting affiliation agreements and separation agreements are preserved.

SECTIONS 60 TO 64. This Part replaces *The Fatal Accidents Act* and extends that Act to cover non-fatal injuries, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. It also replaces the actions for loss of consortium and loss of services of a child (see section 69).

With the abolition of the husband's property in the services of his wife and the parent's property in the services of a child, and the creation of a new, qualified obligation of support under this Act, a new basis is created on which family members can recover expenses they incur for the benefit of an injured person. This section will allow them to recover the same kind of pecuniary loss as can now be recovered under *The Fatal Accidents Act*.

Section 60 extends the right to claim to a broader class of related person than under *The Fatal Accidents Act*. Subsection 2 codifies the case law under *The Fatal Accidents Act*.

The following sections are based on the provisions of that Act and require all claimants to join in one action. Insurance payments are not to be considered in assessing damages. The \$800 limit on funeral expenses is removed to allow recovery of reasonable funeral expenses actually incurred.

(3) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1. One action and limitation of actions

61.—(1) An action under subsection 1 of section 60 in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 1 of section 60. R.S.O. 1970, c. 164, s. 3, *part, amended*. Executor to sue where death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator. When action may be brought by persons beneficially interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7. Regulations and procedure in such case

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to maintain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action. Joining claims

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended*. Affidavit

63.—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4. How money may be paid into court

(2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled. Apportionment

When payment may be postponed

(3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment of damages, insurance

64.—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral expenses

(2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

PART VI

AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unity of legal personality abolished

65.—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of married person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem

(3) Without limiting the generality of subsections 1 and 2,

(a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;

(b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part*.

(c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

Purpose of subss. 1, 2

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4).

Actions between parent and child

66. No person shall be disentitled from bringing an action or other proceeding against another for the reason

SECTION 65. This section formerly appeared as section 1 (1, 2, 4) of *The Family Law Reform Act, 1975*. Subsection 3 (c) is new.

SECTION 66. This section formerly appeared as section 3 of *The Family Law Reform Act, 1975*.

SECTION 67. This section formerly appeared as section 4 of *The Family Law Reform Act, 1975*.

SECTION 68. The domicile of a minor is no longer dependent automatically on the domicile of the father alone. A minor who is or has been married is capable of acquiring a domicile as if an adult.

SECTION 69. This section abolishes several old and little used common law actions, as recommended by the Ontario Law Reform Commission in Part I of its Report on Family Law. The loss of consortium and loss of services actions are replaced by sections 60 to 64. Subsection 5 results from the abolition of the seduction action.

only that they stand in the relationship of parent and child.
1975, c. 41, s. 3.

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4. Recovery for prenatal injuries

68.—(1) Subject to subsection 2, a child who is a minor, Domicile of minors

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or

(d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age. Idem

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery. Criminal conversation abolished

(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom. Enticement and harbouring of spouse abolished

(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom. Loss of consortium abolished

(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom. Enticement, harbouring, seduction, loss of services of child abolished

(5) *The Seduction Act*, being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed. R.S.O. 1970, c. 428; 1971, c. 98, Sched., par. 30, repealed

R.S.O. 1970,
c. 228, s. 59,
amended

(6) Section 59 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.

Dower
abolished

70.—(1) The common law right of a widow to dower is hereby abolished.

R.S.O. 1970,
c. 135;
1971, c. 98,
Sched.,
par. 11,
repealed

(2) *The Dower Act*, being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 152, s. 28 (2),
repealed

(3) Subsection 2 of section 28 of *The Execution Act*, being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.

Vested
right to
dower

(4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.

Refund of
indemnity
held by
accountant
for dower

(5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.

Alimony
abolished

71.—(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.

Continuation
of action
commenced

(2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate.

Polygamous
marriages

72. This Act applies to persons whose marriage was actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid.

R.S.O. 1970,
c. 64, s. 27 (4),
amended

73.—(1) Subsection 4 of section 27 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "*Part II of The Family Law Reform Act, 1977*".

SECTION 70. Because of the rights conferred on husbands and wives under Parts I and III, dower is abolished. Subsection 4 preserves vested rights of dower where the husband dies before this Act comes into force. Where money has been paid into court in respect of an inchoate dower interest, the husband is entitled to recover the money. Subsections 2 and 3 repeal statutory references to dower.

The widower's right of curtesy is abolished by *The Succession Law Reform Act, 1977*.

SECTION 71. The alimony action is abolished, as it is replaced by Part II. Applications to vary existing alimony orders are to be made under section 21. Alimony actions that have not come to trial are converted into applications for support under Part II.

SECTION 72. The obligations and remedies under this Act are not denied for the reason that the marriage is polygamous.

SECTION 73. Part III of *The Child Welfare Act* is replaced by Part II and section 58.

SECTION 74. *The Children's Maintenance Act* is replaced by Part II.

SECTION 75. The amendment is consequential to section 30 (2).

SECTION 76. *The Deserted Wives' and Children's Maintenance Act* is replaced by Part II.

SECTION 77. *The Employment Standards Act, 1974* is amended to extend the protection against dismissal or suspension in respect of garnishment of wages to cover attachment of wages under section 30 of this Act.

SECTION 78. Sections 1 to 4 of *The Family Law Reform Act, 1975* are incorporated in or replaced by this Act. See sections 6, 7, 65, 66 and 67.

SECTION 79. *The Fatal Accidents Act* is incorporated in sections 60 to 64.

SECTION 80. Provisions of *The Infants Act* relating to support and marriage contracts are repealed, as they are replaced by Part II and Part IV, respectively.

(2) Part III of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, is repealed. Part III,
repealed

74. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed. R.S.O. 1970,
c. 67;
1971, c. 98,
s. 18 (2),
repealed

75. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970,
c. 97, s. 4 (9),
amended

(9) This section does not apply to an attachment made under section 30 of *The Family Law Reform Act*, 1977. 1977, c. . . .
exempted

76. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act*, 1973, being chapter 133, are repealed. R.S.O. 1970,
c. 128,
1971, c. 98,
s. 18 (1);
1973, c. 133,
repealed

77. Section 9 of *The Employment Standards Act*, 1974, being chapter 112, is repealed and the following substituted therefor: 1974, c. 122,
s. 9,
re-enacted

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or may be taken against the employee or that an attachment order under section 30 of *The Family Law Reform Act*, 1977 has been or may be made against the employee. Garnish-
ment or
attachment
of wages

1977, c. . . .

78. Sections 1, 2, 3 and 4 of *The Family Law Reform Act*, 1975, being chapter 41, are repealed. 1975, c. 41,
ss. 1-4,
repealed

79. *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act*, 1973, being chapter 16, and *The Fatal Accidents Amendment Act*, 1975, being chapter 38, are repealed. R.S.O. 1970,
c. 164;
1973, c. 16;
1975, c. 38,
repealed

80.—(1) *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by striking out, R.S.O. 1970,
c. 222,
amended

(a) subsection 4, subsection 4a, as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1;

(b) subsection 2 of section 2;

(c) sections 10, 13 and 14; and

(d) section 15, as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16.

1971, c. 98,
s. 18 (3),
Sched., par. 14,
subpar. 1,
repealed

(2) *The Age of Majority and Accountability Act, 1971*, being chapter 98, is amended by striking out,

(a) section 10;

(b) subsection 3 of section 18; and

(c) subparagraph i of paragraph 14 of the Schedule.

R.S.O. 1970,
c. 228, s. 81,
repealed

81.—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-
ance for
existing
judgments

(2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

R.S.O. 1970,
c. 262, ss. 1, 12,
repealed

82. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 265, ss. 1-5,
8;
1971, c. 98,
s. 18 (4),
repealed

83. Sections 1, 2, 3, 4, 5 and 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act, 1971*, being chapter 98, are repealed.

R.S.O. 1970,
c. 336,
repealed

84. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 342,
s. 24,
amended

85. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection:

Application
of subs. 1

(2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act, 1977*.

1977, c. . . .

SECTION 81. The repeal of section 81 of *The Judicature Act*, which allows the registration of alimony orders against land, results from the abolition of alimony in section 71.

SECTION 82. The remaining sections of *The Married Women's Property Act* are repealed, as they are replaced by sections 6 and 7.

SECTION 83. Provisions of *The Matrimonial Causes Act* relating to support on the annulment of a marriage are repealed, as they are replaced by Part II.

SECTION 84. *The Parents' Maintenance Act* is replaced by Part II.

SECTION 85. *The Pension Benefits Act* is amended to make pensions available to satisfy a support order.

SECTION 86. The repealed provision allows support orders made in the Supreme Court to be filed for enforcement in the provincial court (family division). This is provided for in section 27. The repealed provision remains in force for orders made in actions begun before this Act comes into force.

SECTION 87. This amendment is made to bring the terminology in *The Reciprocal Enforcement of Maintenance Act* into line with that used in this Act.

SECTION 88. The provision of *The Statute of Frauds* relating to marriage contracts is replaced by section 54 (1).

SECTION 89. No action or proceeding under the repealed or abolished provisions may be begun after this Act comes into force.

86.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 369, s. 25, repealed

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned. Transition for existing orders R.S.O. 1970, c. 369

87.—(1) *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out “summons” in each case where it appears and inserting in lieu thereof “notice of application”. R.S.O. 1970, c. 403, amended

(2) Subsection 3 of section 2 of the said Act is amended by striking out “*The Deserted Wives’ and Children’s Maintenance Act*” and inserting in lieu thereof “Part II of *The Family Law Reform Act, 1977*”. Idem s. 3 (2), amended

88. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by striking out “any agreement made upon consideration of marriage, or upon” in the fifth and sixth lines. R.S.O. 1970, c. 444, s. 4, amended

89. Sections 69, 73, 74, 76, 79, 80, 82, 83 and 84 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date. Application of ss. 69, 73, 74, 76, 79, 80, 82, 83 and 84

GENERAL

90. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations. Regulations

91. This Act comes into force on the 31st day of March, 1978. Commencement

92. The short title of this Act is *The Family Law Reform Act, 1977*. Short title

An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships

1st Reading

October 17th, 1977

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(*Government Bill*)

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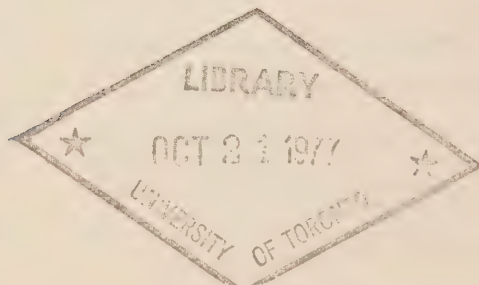
BILL 60

Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the Law respecting
Succession to the Estates of Deceased Persons**

THE HON. R. MCMURTRY
Attorney General



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GENERAL

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EXPLANATORY NOTES

The Bill provides for a comprehensive reform of the law of testate and intestate succession as a part of the general reform of family law. The Bill implements the reports of the Ontario Law Reform Commission relating to wills and international wills and adopts principles relating to estates recommended in its reports on children, support obligations and family property.

Principal changes include the following:

1. The equalization of the treatment of children born within or outside marriage in estate matters.
2. The adoption of *The Uniform Wills Act*, including recognition of the holograph will, and the adoption of the Uniform Law on the Form of an International Will.
3. The adoption of the basic principle of *The Uniform Survivorship Act*.
4. Increasing the preferential share of a spouse on intestacy from \$50,000 to \$75,000 and the provision of a formula for determining a preferential share in cases of partial intestacy.
5. Equalizing the rights of spouses on intestacy to a distributive share in any property remaining after the preferential share and, where there are no children, providing for the surviving spouse to take the remainder to the exclusion of next of kin.
6. Enabling dependants of a deceased person to make a claim for support against the estate not only in cases where the deceased made insufficient provision for them by will but also in cases where the deceased died without a will.
7. Enlarging the classes of persons who may claim support from an estate as dependants generally, so as to include collaterals, and so as to recognize the claims of common law spouses and former spouses in certain cases.
8. Equalizing the effect of conduct on the claims of widows and widowers for support from an estate.
9. Redefining the estate of the deceased against which a claim for support may be made so as to include revocable *inter vivos* trusts and gifts made in contemplation of death and excluding property which is the subject of a contract to make a will to the extent that valuable consideration has been given therefor.
10. Redefining the class of persons who have rights under *The Compensation for Victims of Crime Act, 1971* so as to have a consistent approach with respect to survivors' benefits for dependants.

BILL 60

1977

An Act to reform the Law respecting Succession to the Estates of Deceased Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a child conceived before and born alive after the death of the parent; R.S.O. 1970,
c. 64
- (b) “grandchild” means the child of a child;
- (c) “issue” means any lineal descendant of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes issue conceived before and born alive after the death of the person;
- (d) “parent” means the father or mother of a child;
- (e) “personal representative” means an executor, an administrator or an administrator with will annexed;
- (f) “property” means real or personal property;
- (g) “will” includes,
 - (i) a testament,
 - (ii) a codicil,
 - (iii) an appointment by will or by writing in the nature of a will in exercise of a power, and
 - (iv) any other testamentary disposition. R.S.O. 1970, c. 499, s. 1, *amended*.

Relationship
of persons
born
outside
marriage

(2) In this Act, and in any will unless a contrary intention is shown in the will, a reference to a person in terms of a relationship to another person determined by blood or marriage shall be deemed to include a person who comes within the description notwithstanding that he or any other person through whom the relationship is traced was born outside marriage.

Application
of subs. 2

(3) Subsection 2 applies in respect of wills made on or after the 31st day of March, 1978. *New.*

PART I

TESTATE SUCCESSION

GENERAL

Power to
dispose of
property
by will

2. A person may by will devise, bequeath or dispose of all property (whether acquired before or after making his will) to which at the time of his death he is entitled either at law or in equity, including,

- (a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interests in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will; and
- (c) rights of entry, whether for conditions broken or otherwise. R.S.O. 1970, c. 499, s. 8, *amended*.

Will to be
in writing

3. A will is valid only when it is in writing. R.S.O. 1970, c. 499, s. 11 (1), *part*.

Execution

4.—(1) Subject to sections 5 and 6, a will is not valid unless,

- (a) at its end it is signed by the testator or by some other person in his presence and by his direction;

- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
- (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

(2) Where witnesses are required by this section, no form ^{Idem} of attestation is necessary. R.S.O. 1970, c. 499, s. 11 (1), *part, amended.*

5.—(1) A person who is,

- (a) a member of the Canadian Forces placed on active service pursuant to the *National Defence Act* (Canada); ^{Will of member of forces on active service R.S.C. 1970, c. N-4}
- (b) a member of any other naval, land or air force while on active service; or
- (c) a mariner or seaman when at sea or in the course of a voyage,

may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness. R.S.O. 1970, c. 499, s. 13 (1, 3).

(2) For the purpose of this section, a certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was on active service at that time, is *prima facie* evidence of that fact. ^{Certificate of active service}

(3) For the purposes of this section, if a certificate under subsection 2 is not available, a member of a naval, land or air force is deemed to be on active service after he has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service. *New.* ^{Where certificate not available}

6. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness. *New.* ^{Holograph wills}

7.—(1) In so far as the position of the signature is concerned, a will, whether holograph or not, is valid if the ^{Position of signature}

signature of the testator made either by him or the person signing for him is placed at, after, following, under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

Idem

(2) A will is not rendered invalid by the circumstance that,

- (a) the signature does not follow or is not immediately after the end of the will;
- (b) a blank space intervenes between the concluding words of the will and the signature;
- (c) the signature,
 - (i) is placed among the words of a testimonium clause or of a clause of attestation,
 - (ii) follows or is after or under a clause of attestation either with or without a blank space intervening, or
 - (iii) follows or is after, under or beside the name of a subscribing witness;
- (d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written to contain the signature.

Idem

(3) The generality of subsection 1 is not restricted by the enumeration of circumstances set out in subsection 2, but a signature in conformity with section 4, 5 or 6 or this section does not give effect to,

- (a) a disposition or direction that is underneath the signature or that follows the signature; or
- (b) a disposition or direction inserted after the signature was made. R.S.O. 1970, c. 499, s. 11 (2), *amended*.

8.—(1) A will made by a person who is under the age of ^{Wills by minors} eighteen years is not valid unless at the time of making the will the person,

(a) is or has been married;

(b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;

(c) is a member of a component of the Canadian Forces,

(i) that is referred to in the *National Defence Act* ^{R.S.C. 1970, c. N-4} (Canada) as a regular force, or

(ii) while placed on active service under the *National Defence Act* (Canada); or

(d) is a mariner or seaman and at sea or in the course of a voyage.

(2) A certificate purporting to be signed by or on behalf of ^{Certificate of active service} an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was at that time a member of a regular force or was on active service within clause c of subsection 1, is *prima facie* evidence of that fact.

(3) A person who has made a will under subsection 1 may, ^{Revocation} while under the age of eighteen years, revoke the will. R.S.O. 1970, c. 499, ss. 10, 13 (2), *amended*.

9. No appointment made by will in exercise of any power ^{Exercise of appointments by will} is valid unless the appointment is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O. 1970, c. 499, s. 12.

10. A will made in accordance with this Part is valid ^{Publication unnecessary} without other publication. R.S.O. 1970, c. 499, s. 14, *amended*.

Effect of
incompetency
of witness

11. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid. R.S.O. 1970, c. 499, s. 15, *amended*.

Bequests
to witness
void

12.—(1) Where a will is attested by a person to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns,

- (a) the person so attesting;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 16, *part, amended*.

Where will
signed for
testator by
another
person

(2) Where a will is signed for the testator by another person in accordance with section 4, to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest, or other disposition is void so far only as it concerns,

- (a) the person so signing;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the will is not invalid for that reason.

Where no
undue
influence

(3) Notwithstanding anything in this section, where a surrogate court is satisfied that neither the person so attesting or signing for the testator nor the spouse exercised any improper or undue influence upon the testator, the devise, bequest or other disposition or appointment is not void. *New*.

Exception

(4) Where a will is attested by at least two persons who are not within subsection 1 or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection. R.S.O. 1970, c. 499, s. 16, *part, amended*.

13. Where property is charged by a will with a debt and a creditor or the spouse of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding the charge, is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 17, *amended*. Creditor
as witness

14. A person is not incompetent as a witness to prove the execution of a will or its validity or invalidity solely because he is an executor. R.S.O. 1970, c. 499, s. 18, *amended*. Executor
as witness

15. A will or part of a will is revoked only by, Revocation

- (a) marriage, subject to section 16;
- (b) another will made in accordance with the provisions of this Part;
- (c) a writing,
 - (i) declaring an intention to revoke, and
 - (ii) made in accordance with the provisions of this Part governing making of a will; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it. R.S.O. 1970, c. 499, s. 22, *amended*.

16. A will is revoked by the marriage of the testator except where, Revocation
by marriage

- (a) there is a declaration in the will that it is made in contemplation of the marriage;
- (b) the spouse of the testator elects to take under the will, by an instrument in writing signed by the spouse and filed within one year after the testator's death in the office of the Surrogate Clerk for Ontario; or
- (c) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate. R.S.O. 1970, c. 499, s. 20, *amended*.

Change in
circum-
stances

17.—(1) Subject to subsection 2, a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances. R.S.O. 1970, c. 499, s. 21, *amended*.

Exception on
termination
of marriage

(2) Except when a contrary intention appears by the will, where, after the testator makes a will, his marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his former spouse;
- (b) an appointment of his former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator. *New*.

Alterations
in will

18.—(1) Subject to subsection 2, unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.

How
validly
made

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,

- (a) in the margin or in some other part of the will opposite or near to the alteration; or
- (b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will. R.S.O. 1970, c. 499, s. 23, *amended*.

Revival

19.—(1) A will or part of a will that has been in any manner revoked is revived only,

- (a) by a will made in accordance with the provisions of this Part; or
- (b) by a codicil that has been made in accordance with the provisions of this Part,

that shows an intention to give effect to the will or part that was revoked, or,

- (c) by re-execution thereof with the required formalities, if any.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole. R.S.O. 1970, c. 499, s. 24, *amended*. As to part formerly revoked

20.—(1) A conveyance of or other act relating to property that is the subject of a devise, bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death. R.S.O. 1970, c. 499, s. 25, *amended*. Operation of will as to interest left in testator

(2) Except when a contrary intention appears by the will, where a testator at the time of his death, Rights in place of property devised

- (a) has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;
- (b) has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;
- (c) has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or
- (d) has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will,

the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator. *New.*

When revived
will deemed
made

21. When a will has been revived in the manner described in section 19, the will shall be deemed to have been made at the time at which it was so revived. R.S.O. 1970, c. 499, s. 19 (10), *amended*.

Will to speak
from death

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to,

- (a) the property of the testator; and
- (b) the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator under subsection 2 of section 20. R.S.O. 1970, c. 499, s. 26 (1), *amended*.

Disposition
of property
in void
devise

23. Except when a contrary intention appears by the will, property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of,

- (a) the death of the devisee or donee in the lifetime of the testator; or
- (b) the devise or bequest being disclaimed or being contrary to law or otherwise incapable of taking effect,

is included in the residuary devise or bequest, if any, contained in the will. R.S.O. 1970, c. 499, s. 27, *amended*.

Leasehold
estates under
devise of real
property

24. Except when a contrary intention appears by the will, where a testator devises,

- (a) his real property;
- (b) his real property in a place mentioned in the will, or in the occupation of a person mentioned in the will;
- (c) real property described in a general manner; or
- (d) real property described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates. R.S.O. 1970, c. 499, s. 28, *amended*.

25.—(1) Except when a contrary intention appears by the will, a general devise of,

(a) the real property of the testator;

(b) the real property of the testator,

(i) in a place mentioned in the will, or

(ii) in the occupation of a person mentioned in the will; or

(c) real property described in a general manner,

includes any real property, or any real property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of,

(a) the personal property of the testator; or

(b) personal property described in a general manner,

includes any personal property, or any personal property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power. R.S.O. 1970, c. 499, s. 29, *amended*.

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 30, *amended*.

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the “heir” or “heirs” of the testator or of another person, the words “heir” or “heirs” mean the person to whom the beneficial interest in the property would have gone under the law of Ontario if the testator or the other person died intestate. R.S.O. 1970, c. 499, s. 31, *amended*.

28.—(1) Subject to subsection 2, in a devise or bequest of property,

(a) the words,

(i) “die without issue”,

Disposition of real property over which testator has power of appointment under devise

Disposition of personal property over which testator has power of appointment under bequest

Real property passing under devise without words of limitation

Meaning of “heir” in devise of property

Import of words “die without issue”, etc.

- (ii) “die without leaving issue”, or
- (iii) “have no issue”; or

- (b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

Cases to which Part not to extend

(2) This Part does not extend to cases where the words defined in subsection 1 import,

- (a) if no issue described in a preceding gift be born; or
- (b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.
R.S.O. 1970, c. 499, s. 32, *amended*.

Devise to trustee or executor

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 33, *amended*.

When devise to trustee to pass whole estate beyond what is requisite for trust

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits,

- (a) is not given to a person for life; or
- (b) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1970, c. 499, s. 34, *amended*.

Substitutional gifts

31. Except when a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes his will,

and leaves a spouse or issue surviving the testator, the devise or bequest does not lapse but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible,

- (a) if that person had died immediately after the death of the testator;
- (b) if that person had died intestate;
- (c) if that person had died without debts; and
- (d) if section 46 had not been passed. R.S.O. 1970, c. 499, s. 36, *amended*.

32.—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in freehold or leasehold property which, at the time of his death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention,

Primary liability of real property to satisfy mortgage

- (a) the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and
- (b) every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection 1 by,

Consequence of general direction to pay debts out of personality or residue

- (a) a general direction for the payment of debts or of all the debts of the testator out of his personal estate, his residuary real or personal estate or his residuary real estate; or
- (b) a charge of debts upon that estate,

unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

Saving of mortgagee's rights

Interpre-
tation

(4) In this section, "mortgage" includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and "mortgage debt" has a meaning similarly extended. R.S.O. 1970, c. 499, s. 37, *amended*.

Undisposed
of residue

33.—(1) Where a person dies having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect of it, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

Where no
person
entitled
to residue

(2) Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Part had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under Part II in case of an intestacy. R.S.O. 1970, c. 470, s. 55, *amended*.

CONFLICT OF LAWS

Interpre-
tation

34. In sections 36 to 41,

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land; R.S.O. 1970, c. 499, s. 19 (1).
- (c) "internal law" in relation to any place excludes the choice of law rules of that place. *New.*

Wills made
in or out
of Ontario

35. Sections 36 to 41 apply to a will made either in or out of Ontario. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

Formalities,
re interests
in land

36.—(1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.

(2) Subject to other provisions of this Part, the manner^{re interests in movables} and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his death. R.S.O. 1970, c. 499, s. 19 (2, 3), *amended*.

37.—(1) As regards the manner and formalities of making^{Formalities re interests in movables or in land} a will of an interest in movables or in land, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where,

- (a) the will was made;
- (b) the testator was then domiciled;
- (c) the testator then had his habitual residence; or
- (d) the testator then was a national if there was in that place one body of law governing the wills of nationals. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

(2) As regards the manner and formalities of making a^{Idem} will of an interest in movables or in land, the following are properly made,

- (a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and
- (c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power. *New*.

38. A change of domicile of the testator occurring after^{Change of domicile} a will is made does not render it invalid as regards the

manner and formalities of its making or alter its construction. R.S.O. 1970, c. 499, s. 19 (5).

Construction
of will

39. Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. R.S.O. 1970, c. 499, s. 19 (6).

Movables
used in
relation
to land

40. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land. R.S.O. 1970, c. 499, s. 19 (7), *amended*.

Where law
outside
Ontario to be
applied to
will

41.—(1) Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

- (a) special formalities are to be observed by testators answering a particular description; or
- (b) witnesses to the making of a will are to possess certain qualifications,

shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Formal
requirements
of law

(2) In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made. *New*.

INTERNATIONAL WILLS

Effective
date

42.—(1) In this section,

- (a) “convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section;
- (b) “effective date” means the later of,
 - (i) the day on which, in accordance with Article XI of the convention, the convention enters into force, or

- (ii) the day that is six months after the date on which the Government of Canada submits to the Depositary Government under the convention a declaration that the convention extends to Ontario.

(2) On, from and after the effective date the convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an international will set out in the Annex to the convention are law in Ontario. Convention on form of international will

(3) All members of the Law Society of Upper Canada, other than student members, are designated as persons authorized to act in connection with international wills. Persons authorized under convention

(4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section. Validity of wills under other laws

(5) The Attorney General shall request the Government of Canada to submit a declaration to the Depositary Government under the convention, declaring that the convention extends to Ontario. Accession to convention

(6) As soon as the effective date is determined, the Attorney General shall publish in *The Ontario Gazette* a notice indicating the date that is the effective date for the purposes of this section. Notice of effective date

SCHEDULE

Convention Providing a Uniform Law on The Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII,

denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or,

if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I,.....(name, address and capacity),
a person authorized to act in connection with international wills

2. Certify that on.....(date) at.....(place)

3. (testator)..... (name, address, date and
place of birth)

in my presence and that of the witnesses

4. (a) (name, address, date and
place of birth)

(b) (name, address, date and
place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason.....

—I have mentioned this declaration on the will

*—the signature has been affixed by (name, address)

7. (b) the witnesses and I have signed the will;
- 8.*(c) each page of the will has been signed by
and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of
the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according
to the law under which I am acting;
- 11.*(f) the testator has requested me to include the following statement
concerning the safekeeping of his will:
12. PLACE
13. DATE
14. SIGNATURE and, if nec-
essary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

REPEALS

43.—(1) Except as provided in subsection 2, the following ^{Repeals} are repealed:

- (a) *The Wills Act*, being chapter 499 of the Revised Statutes of Ontario, 1970;

- (b) chapter 3 of the Statutes of Ontario, 1971;
- (c) paragraph 36 of the Schedule to chapter 98 of the Statutes of Ontario, 1971; and
- (d) section 55 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970.

Exception (2) The enactments repealed by subsection 1 continue in force as if unrepealed in respect of wills made by a testator who died before the 31st day of March, 1978.

Application of Part **44.** This Part applies to wills made before, on or after the 31st day of March, 1978 where the testator has not died before that date.

PART II

INTESTATE SUCCESSION

Intestacy where spouse and no issue **45.** Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely. *New.*

Preferential share of spouse where issue **46.**—(1) Subject to subsection 3, where a person dies intestate in respect of property having a net value of not more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to the property absolutely. R.S.O. 1970, c. 179, s. 11 (1); 1973, c. 18, s. 1 (1), *amended*.

Idem (2) Subject to subsection 3, where a person dies intestate in respect of property having a net value of more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to \$75,000 absolutely. R.S.O. 1970, c. 129, s. 11 (2); 1973, c. 18, s. 1 (2), *amended*.

Idem (3) Notwithstanding subsection 1, where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,

(a) where the spouse is entitled under the will to nothing or to property having a net value of less than \$75,000, the spouse is entitled out of the intestate property to the amount by which \$75,000 exceeds the net value of the property, if any, to which the spouse is entitled under the will;

(b) where the spouse is entitled under the will to property having a net value of more than \$75,000, subsections 1 and 2 do not apply. *New.*

(4) In this section, “net value” means the value of the property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1970, c. 129, s. 11 (5). ^{Interpretation}

47.—(1) Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment under section 46, if any. ^{Residue: spouse and one child}

(2) Where a person dies intestate in respect of property and leaves a spouse and more than one child, the spouse is entitled to one-third of the residue of the property after payment under section 46, if any. ^{Idem: spouse and two or more children}

(3) Where a child has died leaving issue living at the date of the intestate’s death, the spouse’s share shall be the same as if the child had been living at that date. R.S.O. 1970, c. 129, s. 31, *part, amended*. ^{Idem: issue of predeceased children}

48.—(1) Subject to subsection 2, where a person dies intestate in respect of property and leaves issue surviving him, the property shall be distributed, subject to the rights of the spouse, if any, equally among his issue who are of the nearest degree in which there are issue surviving him. ^{Issue}

(2) Where any issue of the degree entitled under subsection 1 has predeceased the intestate, the share of such issue shall be distributed among his issue in the manner set out in subsection 1 and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed. ^{Share of predeceasing issue}

(3) Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely. ^{Parents}

(4) Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally. ^{Brothers and sisters}

(5) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or ^{Nephews and nieces}

sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

Next of kin

(6) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation. R.S.O. 1970, c. 129, s. 31, *part, amended*.

Escheat

(7) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and *The Escheats Act* applies.

R.S.O. 1970,
c. 149

Degrees of kindred

(8) For the purposes of subsection 6, degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants conceived but unborn

(9) For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him. *New*.

Abolition of curtesy

49. The common law right of a widower to curtesy is hereby abolished.

Repeal of
R.S.O. 1970,
c. 129, ss. 8, 10,
11, 12, 13, 30, 31,
31a, 32

50.—(1) Sections 8 and 10, sections 11 and 12, as amended by the Statutes of Ontario, 1973, chapter 18, sections 1 and 2, sections 13, 30 and 31, section 31a, as enacted by the Statutes of Ontario, 1973, chapter 18, section 3, and section 32 of *The Devolution of Estates Act*, being chapter 129 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 129, s. 28,
re-enacted

(2) Section 28 of the said Act is repealed and the following substituted therefor:

Search for children born outside marriage

28.—(1) A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

Liability of personal representative

(2) A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

- (a) he makes the inquiries referred to in subsection 1 and the entitlement of the person entitled was not

known to the personal representative at the time of the distribution; and

- (b) he makes such search of the records of the Registrar General relating to parentage as is available for the existence of persons who are entitled by virtue of a relationship traced through a birth outside marriage and the search fails to disclose the existence of such a person.

(3) Nothing in this section prejudices the right of any ^{Saving rights} person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where there is no presumption or court finding of the parentage of a person born outside marriage until after the death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage.

51.—(1) Section 29 of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes of Ontario, 1970, is repealed ^{R.S.O. 1970, c. 85, s. 29, repealed}.

(2) Section 30 of the said Act is amended by striking out “A tenant by the curtesy” in the first line. ^{R.S.O. 1970, c. 85, s. 30, amended}

52. The enactments repealed or amended by sections 50 and 51 continue in force as if unrepealed or unamended in respect of a death occurring before the 31st day of March, 1978. ^{Exception}

53. This Part applies to an intestacy upon a death occurring on or after the 31st day of March, 1978. ^{Application}

PART III

DESIGNATION OF BENEFICIARIES OF INTEREST IN FUNDS OR PLANS

54. In this Part,

^{Interpre-}
^{tation}

- (a) “participant” means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant’s death;

- (b) “plan” means,

- (i) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement

or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents, or former agents of an employer or their dependants or beneficiaries, or

- (ii) a fund, trust, scheme, contract, or arrangement for the payment of a periodic sum for life or for a fixed or variable term,

created before or after the commencement of this Act, and includes a retirement savings plan and a home ownership savings plan as defined in the *Income Tax Act* (Canada).
New.

R.S.C. 1952,
c. 148

Designation
of
beneficiaries

55.—(1) A participant may designate a person to receive a benefit payable under a plan on the participant's death,

- (a) by an instrument signed by him or signed on his behalf by another person in his presence and by his direction; or

- (b) by will,

and may revoke the designation by either of those methods.
1973, c. 132, s. 1, *part, amended.*

Idem

- (2) A designation in a will is effective only if it relates expressly to a plan, either generally or specifically. *New.*

Revocation
of
designation

56.—(1) A revocation in a will is effective to revoke a designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

Idem

- (2) Notwithstanding section 15, a later designation revokes an earlier designation, to the extent of any inconsistency.

Idem

- (3) Revocation of a will revokes a designation in the will.

Where
will invalid

- (4) A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

Idem

- (5) A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

Earlier
designations
not revived

- (6) Revocation of a designation does not revive an earlier designation.

(7) Notwithstanding section 22, a designation or revocation in a will is effective from the time when the will is signed. Effective date
New.

57. Where, in accordance with the terms of a plan, a participant has designated a person to receive a benefit under the plan in the event of the death of the participant, Enforcement by beneficiary

(a) the person administering the plan is discharged on paying the benefits to the person designated; and

(b) the person designated may enforce payment of the benefit payable to him under the plan but the person administering the plan may set up any defence that he could have set up against the participant or his personal representative. R.S.O. 1970, c. 85, s. 63; 1973, c. 132, s. 1, *part, amended.*

58.—(1) Where this Part is inconsistent with a plan, this Part applies, unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment where the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies. Application of Part to plan *New.*

(2) This Part does not apply to a contract or to a designation of a beneficiary to which *The Insurance Act* applies. Exception R.S.O. 1970, c. 224 1973, c. 132, s. 1, *part.*

59. Section 63, and section 64 as enacted by the Statutes of Ontario, 1973, chapter 132, section 1, of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970, c. 85, ss. 63, 64, repealed

60. Section 17 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 342, s. 17, repealed

PART IV

SURVIVORSHIP

61.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the property of each person, or any property of which he is competent to dispose, shall be disposed of as if he had survived the other or others. Survivorship as to succession R.S.O. 1970, c. 45, s. 1 (1).

(2) Unless a contrary intention appears, where two or more persons hold legal or equitable title to property as joint tenants, Simultaneous death of joint tenants

or with respect to a joint account, with each other, and all of them die at the same time or in circumstances rendering it uncertain which of them survived the other or others, each person shall be deemed, for the purposes of subsection 1, to have held as tenant in common with the other or with each of the others in that property.

Provision in will for substitute representative

(3) Where a will contains a provision for a substitute personal representative operative if an executor designated in the will,

- (a) dies before the testator;
- (b) dies at the same time as the testator; or
- (c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides shall be deemed to have occurred. *New.*

Proceeds of insurance
R.S.O. 1970,
c. 224

(4) The proceeds of a policy of insurance shall be paid in accordance with sections 190 and 268 of *The Insurance Act* and thereafter this Part applies to their disposition. R.S.O. 1970, c. 454, s. 1 (2); 1972, c. 43, s. 1, *amended*.

Repeals

62.—(1) *The Survivorship Act*, being chapter 454 of the Revised Statutes of Ontario, 1970, and *The Survivorship Amendment Act, 1972*, being chapter 43, are repealed.

Exception

(2) The enactment repealed by subsection 1 continues in force as if unrepealed in respect of deaths occurring before the 31st day of March, 1978.

Application of Part

63. This part applies in respect of deaths occurring on or after the 31st day of March, 1978.

PART V

SUPPORT OF DEPENDANTS

Interpre-
tation

64. In this Part,

- (a) “child” means a child as defined in clause *a* of subsection 1 of section 1 and includes a grand-child and a person whom the deceased has demonstrated a settled intention to treat as a child of his family but does not include a child placed in a

foster home for consideration by a person having lawful custody;

(b) “common law spouse” means either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents;

(c) “court” means the surrogate court having jurisdiction to grant letters probate or letters of administration in the estate of the deceased;

(d) “dependant” means,

(i) the spouse or common law spouse of the deceased,

(ii) a parent of the deceased,

(iii) a child of the deceased, or

(iv) a brother or sister of the deceased,

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his death;

(e) “letters probate” and “letters of administration” include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this province;

(f) “parent” includes a grandparent and a person who has demonstrated a settled intention to treat the deceased as a child of his family, but does not include a person in whose home the deceased was placed as a foster child for consideration by a person having lawful custody;

(g) “spouse” includes a person whose marriage to the deceased was terminated or declared a nullity. R.S.O. 1970, c. 126, s. 1, *amended*.

Order for
support

65.—(1) Where a deceased, whether testate or intestate, has not made adequate provision for the proper support of his dependants or any of them, the court, on application, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them. R.S.O. 1970, c. 126, s. 2 (1), *amended*.

Applicants

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant, or by,

(a) the Ministry of Community and Social Services in the name of the Minister;

(b) a municipal corporation, including a metropolitan, district or regional municipality but not including an area municipality thereof; or

(c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

Idem

(3) The adequacy of provision for support under subsection 1 shall be determined as of the date of the hearing of the application. *New*.

Suspensory
order

66. On an application by or on behalf of the dependants or any of them, the court may make an order suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide. *New*.

Application

67.—(1) An application under this Part may be made to the court by originating notice of motion in accordance with the practice of the court. R.S.O. 1970, c. 126, s. 4 (1), *amended*.

Idem

(2) Where an application for an order under section 65 is made by or on behalf of any dependant,

(a) it may be dealt with by the court as; and

(b) in so far as the question of limitation is concerned, it shall be deemed to be,

an application on behalf of all persons who might apply. *New*.

Limitation
period

68.—(1) Subject to subsection 2, no application for an order under section 65 may be made after six months from

the grant of letters probate of the will or of letters of administration.

(2) The court, if it considers it proper, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. Exception
R.S.O. 1970, c. 126, s. 4 (2), *amended*.

69.—(1) Upon the hearing of an application under this Part, the court, Consideration
on
application

(a) shall inquire into and consider all the circumstances of the application, including,

- (i) the assets and means of the dependant,
- (ii) the capacity of the dependant to provide for his or her own support,
- (iii) the age and the physical and mental health of the dependant,
- (iv) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living,
- (v) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures,
- (vi) the proximity and duration of the dependant's relationship with the deceased,
- (vii) the contributions made by the dependant to the deceased's welfare, including indirect and non-financial contributions,
- (viii) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased's property, business or occupation,
- (ix) whether the dependant has a legal obligation to provide support for another person,
- (x) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education,
- (xi) where the dependant is a child of the age of sixteen years or more, his or her withdrawal from parental control;

- (xii) where the dependant is the spouse of the deceased, a course of conduct by the spouse during the lifetime of the deceased that is an obvious and gross repudiation of the relationship,
 - (xiii) the circumstances of the deceased at the time of death,
 - (xiv) any agreement between the deceased and the dependant,
 - (xv) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order, and
 - (xvi) the claims that any other person may have as a dependant;
- (b) in addition to the evidence adduced by the parties appearing, may direct such other evidence to be given as the court considers necessary or proper; and
- (c) may accept such evidence as the court considers proper of the deceased's reasons, so far as ascertainable,
- (i) for making the dispositions made by his will, or
 - (ii) for not making adequate provision for a dependant,

including any statement in writing signed by the deceased. R.S.O. 1970, c. 126, s. 6, *amended*.

Idem

(2) In estimating the weight to be given to a statement referred to in clause *c* of subsection 1, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. *New*.

Conditions
and
restrictions

70.—(1) In any order making provision for support of a dependant, the court may impose such conditions and restrictions as the court considers appropriate.

(2) Provision may be made out of income or capital or ^{Contents of order} both and an order may provide for one or more of the following, as the court considers appropriate,

- (a) an amount payable annually or otherwise whether for an indefinite or limited period or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned to or in trust for the benefit of the dependant, whether absolutely, for life or for a term of years;
- (d) the possession or use of any specified property by the dependant for life or such period as the court considers appropriate;
- (e) a lump sum payment to supplement or replace periodic payments;
- (f) the securing of payment under an order by a charge on property or otherwise;
- (g) the payment of a lump sum or of increased periodic payments to enable a dependant spouse or child to meet debts reasonably incurred for his or her own support prior to an application under this Part;
- (h) that all or any of the moneys payable under the order be paid to an appropriate person or agency for the benefit of the dependant;
- (i) the payment to an agency referred to in subsection 2 of section 65 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order. R.S.O. 1970, c. 126, s. 2, *amended*.

(3) Where a transfer or assignment of property is ordered, ^{Idem} the court may,

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the court may direct;
or
- (b) grant a vesting order.

(4) An order under this section may be made notwithstanding any agreement or waiver to the contrary. *New.* ^{Agreement or waiver}

Notice to
parties
before order

(5) The court shall not make any order under this section until it is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing. R.S.O. 1970, c. 126, s. 5.

Exception

(6) Notwithstanding subsection 5, where, in the opinion of the court,

(a) every reasonable effort has been made to serve those entitled to notice; or

(b) after every reasonable effort has been made, it is not possible to identify one or more of the persons entitled to notice,

the court may dispense with the requirement of notice in respect of any person who has not been served. *New.*

Interim
order

71. Where an application is made under this Part and the applicant is in need of and entitled to support but any or all of the matters referred to in section 69 or 70 have not been ascertained by the court, the court may make such interim order under section 70 as it considers appropriate. 1973, c. 131, s. 1, *part*.

Inquiries
and further
orders

72. Where an order has been made under this Part, the court at any subsequent date may,

(a) inquire whether the dependant benefited by the order has become entitled to the benefit of any other provision for his support;

(b) inquire into the adequacy of the provision ordered; and

(c) discharge, vary or suspend the order, or make such other order as the court considers appropriate in the circumstances. 1973, c. 131, s. 1, *part, amended*.

Further
powers of
court

73. The court may at any time,

(a) fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;

(b) relieve such portion of the estate from further liability; and

(c) direct,

(i) the manner in which such periodic payment is to be secured, or

(ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable. *New.*

74.—(1) Where an application is made and notice thereof is served on the personal representative of the deceased, he shall not, after service of the notice upon him, unless all persons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application. R.S.O. 1970, c. 126, s. 4 (3). Distribution stayed

(2) Nothing in this Part prevents a personal representative from making reasonable advances for support to dependants who are beneficiaries. Exception

(3) Where a personal representative distributes any portion of the estate in violation of subsection 1, if any provision for support is ordered by the court to be made out of the estate, the personal representative is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Part, to be made out of the portion of the estate distributed. *New.* Liability of personal representative

75.—(1) Subject to subsection 2, the incidence of any provision for support ordered shall fall rateably upon that part of the deceased's estate to which the jurisdiction of the court extends. Incidence of provision ordered

(2) The court may order that the provision for support be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to the court seems proper. *New.* Idem

76. The court may give such further directions as it considers necessary for the purpose of giving effect to an order. *New.* Further directions

Certified
copy of
order filed
with the
clerk of
the court

77.—(1) A certified copy of every order made under this Part shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

Idem

(2) A memorandum of the order shall be endorsed on or annexed to the copy, in the custody of the clerk, of the letters probate or letters of administration, as the case may be.
New.

Property
devised

78. Where a deceased,

- (a) has, in his lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath any property; and
- (b) has by his will devised or bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Part except to the extent that the value of the property in the opinion of the court exceeds the consideration therefor. R.S.O. 1970, c. 126, s. 8, *amended*.

Value of
certain
transactions
deemed part
of estate

79.—(1) Subject to section 78, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his net estate for purposes of ascertaining the value of his estate, and being available to be charged for payment by an order under clause *g* of subsection 2 of section 70,

- (a) gifts *mortis causa*;
- (b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;
- (c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of those

persons with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;

- (d) any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants;
- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
- (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him; and
- (g) any amount payable under a designation of beneficiary under Part III.

(2) The capital value of the transactions referred to in clauses *b*, *c* and *d* of subsection 1 shall be deemed to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants was furnished by the deceased. Idem

(3) Dependants claiming under this Part shall have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased. Burden of proof

(4) Where the other party to a transaction described in clause *c* or *d* of subsection 1 is a dependant, he shall have the burden of establishing the amount of his contribution, if any. Idem

(5) This section does not prohibit any corporation or person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled Exception

thereto unless there has been personally served on the corporation or person a certified copy of a suspensory order made under section 66 enjoining such payment or transfer.

Suspensory
order

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of a suspensory order shall be a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period the order is in force.

Rights of
creditor

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights. *New.*

Validity of
mortgage,
etc.

80. Where provision for the support of a dependant is ordered under this Part, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid. *New.*

Persons in
institutions
under
R.S.O. 1970,
c. 269,
1974, c. 2

81.—(1) Where a person by whom, or on whose behalf, an application may be made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974* at the time of the deceased's death or at any time before the application under this Part is heard and disposed of, notice of the application for letters probate or letters of administration shall be served upon the Public Trustee on behalf of that person, and the time within which the Public Trustee may make an application under this Part runs from the date of the service of the notice.

Notice to
Public
Trustee

(2) Where a person interested in the estate in respect of which an application is made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974*, notice of the application shall in every case be served upon the Public Trustee, who has the right to appear and be heard upon the application. R.S.O. 1970, c. 126, s. 4 (5, 6), *amended.*

Removal
into
Supreme
Court

82. At any time before the hearing of an application, a judge of the Supreme Court upon motion on behalf of the personal representative of the deceased, the applicant, or any other person interested, and upon being satisfied that the application is of such a nature and of such importance as to render it proper that it should be disposed of in the Supreme Court and the property of

the deceased exceeds \$20,000, may by order direct that the application be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court who has the like powers and shall proceed in the like manner as the court on an application under this Part. R.S.O. 1970, c. 126, s. 4 (4), *amended*.

83. The court may direct that the costs of the application ^{Costs} be paid out of the estate or otherwise as it thinks proper, and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any support applied for or directed by its order. R.S.O. 1970, c. 126, s. 11.

84. An appeal lies to the Supreme Court from any order ^{Appeal} of the court made under this Part. R.S.O. 1970, c. 126, s. 12 (1), *amended*.

85.—(1) An order or direction made under this Part may ^{Enforcement} be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

(2) Where a court orders security for the payment ^{Realization of security} under an order under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. R.S.O. 1970, c. 126, s. 12, *amended*.

86. This Part binds the Crown. *New.* ^{Crown bound}

87.—(1) Subject to subsection 2, *The Dependants' Relief* ^{Repeals} *Act*, being chapter 126 of the Revised Statutes of Ontario, 1970, and *The Dependants' Relief Amendment Act*, 1973, being chapter 131, are repealed.

(2) The enactments repealed by subsection 1 continue in ^{Exception} force as if unrepealed in respect of applications where the deceased died before the 31st day of March, 1978.

88. This Part does not apply where the deceased died ^{Application of Part} before the 31st day of March, 1978, but an application may be made under section 72 regardless of the time of the deceased's death.

PART VI

RIGHTS OF COMMON LAW SPOUSES
AND CHILDREN BORN OUTSIDE MARRIAGE

1971, c. 51,
s. 1 (1) (b, c),
re-enacted

89.—(1) Clauses *b* and *c* of subsection 1 of section 1 of *The Compensation for Victims of Crime Act, 1971*, being chapter 51, are repealed and the following substituted therefor:

R.S.O. 1970,
c. 64

(b) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a grandchild of the victim and a person whom the victim has demonstrated a settled intention to treat as a child of his family, and includes a child of the victim conceived before and born alive after the victim’s death, but does not include a child placed in the home of the victim as a foster child for consideration by a person having lawful custody;

(c) “dependant” means,

(i) the spouse of the victim,

(ii) a parent of the victim, including a grandparent and a person who has demonstrated a settled intention to treat the victim as a child of his family, but does not include a person in whose home the victim was placed as a foster child for consideration by a person having lawful custody,

(iii) a child of the victim,

(iv) a brother or sister of the victim, and

(v) any other relative of the victim,

who was in whole or in part dependent on the victim for support at the time of his death.

1971,
c. 51, s. 1 (2),
re-enacted

(2) Subsection 2 of the said section 1 is repealed and the following substituted therefor:

Unmarried
spouses

(2) The Board may direct that a person was the spouse of a deceased victim for the purposes of this Act where the Board finds that,

SECTION 89. The definition of child is standardized with the language used elsewhere in the Bill and the definition of dependants expressly includes certain degrees of relationship implicit in what is now referred to as "other relatives". The definition of recognizable common law marriages is standardized with the language used elsewhere in the Bill.

SECTION 90—Subsection 1. The amendment permits gifts made to or by reference to the spouse of a person to take effect where the spouse is a common law spouse, as defined, in the same way as a gift made to or by reference to a legally married spouse.

Subsection 2. The amendment permits gifts made to issue of an unborn person to take effect where the issue is born outside marriage.

(a) they were a man and a woman who, not being married to each other, had been cohabiting immediately before the death of the victim,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents; or

(b) their marriage was terminated by a decree absolute of divorce or was declared a nullity and the spouse was a person to whom the victim was providing support or was under a legal obligation to provide support immediately before his death.

(3) Subject to section 6 of *The Compensation for Victims of Crime Act, 1971*, this section applies to applications whether the victim died before, on or after the 31st day of March, 1978. 1971, c. 51

90.—(1) Section 9 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970, c. 343, s. 9, amended

(2) For the purposes of subsection 1, “spouse” includes either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them, “spouse” defined

(a) continuously for a period of not less than five years; or

(b) in a relationship of some permanence where there is a child born of whom they are the natural parents.

(2) Section 17 of the said Act is amended by striking out “the unborn child or other” in the second and third lines and inserting in lieu thereof “any unborn”. R.S.O. 1970, c. 343, s. 17, amended

(3) Section 17 of the said Act is further amended by adding thereto the following subsection. R.S.O. 1970, c. 343, s. 17, amended

(2) For the purposes of subsection 1, “issue” means issue of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act*. “issue” defined
R.S.O. 1970, c. 64

GENERAL

Commence-
ment **91.** This Act comes into force on the 31st day of March,
1978.

Short title **92.** The short title of this Act is *The Succession Law Reform
Act, 1977*.

An Act to reform the Law respecting
Succession to the Estates of Deceased
Persons

1st Reading

October 17th, 1977

2nd Reading

3rd Reading

THE HON. R. McMURTRY
Attorney General

(Government Bill)

BILL 60

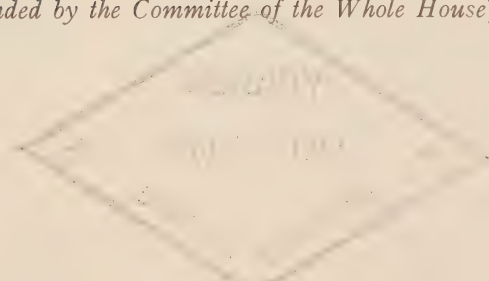
Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the Law respecting
Succession to the Estates of Deceased Persons**

THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Committee of the Whole House)



TORONTO

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EXPLANATORY NOTES

The Bill provides for a comprehensive reform of the law of testate and intestate succession as a part of the general reform of family law. The Bill implements the reports of the Ontario Law Reform Commission relating to wills and international wills and adopts principles relating to estates recommended in its reports on children, support obligations and family property.

Principal changes include the following:

1. The equalization of the treatment of children born within or outside marriage in estate matters.
2. The adoption of *The Uniform Wills Act*, including recognition of the holograph will, and the adoption of the Uniform Law on the Form of an International Will.
3. The adoption of the basic principle of *The Uniform Survivorship Act*.
4. Increasing the preferential share of a spouse on intestacy from \$50,000 to \$75,000 and the provision of a formula for determining a preferential share in cases of partial intestacy.
5. Equalizing the rights of spouses on intestacy to a distributive share in any property remaining after the preferential share and, where there are no children, providing for the surviving spouse to take the remainder to the exclusion of next of kin.
6. Enabling dependants of a deceased person to make a claim for support against the estate not only in cases where the deceased made insufficient provision for them by will but also in cases where the deceased died without a will.
7. Enlarging the classes of persons who may claim support from an estate as dependants generally, so as to include collaterals, and so as to recognize the claims of common law spouses and former spouses in certain cases.
8. Equalizing the effect of conduct on the claims of widows and widowers for support from an estate.
9. Redefining the estate of the deceased against which a claim for support may be made so as to include revocable *inter vivos* trusts and gifts made in contemplation of death and excluding property which is the subject of a contract to make a will to the extent that valuable consideration has been given therefor.
10. Redefining the class of persons who have rights under *The Compensation for Victims of Crime Act, 1971* so as to have a consistent approach with respect to survivors' benefits for dependants.

BILL 60

1977

An Act to reform the Law respecting Succession to the Estates of Deceased Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a child conceived before and born alive after the death of the parent; R.S.O. 1970,
c. 64
- (b) “grandchild” means the child of a child;
- (c) “issue” means any lineal descendant of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes issue conceived before and born alive after the death of the person;
- (d) “parent” means the father or mother of a child;
- (e) “personal representative” means an executor, an administrator or an administrator with will annexed;
- (f) “property” means real or personal property;
- (g) “will” includes,
 - (i) a testament,
 - (ii) a codicil,
 - (iii) an appointment by will or by writing in the nature of a will in exercise of a power, and
 - (iv) any other testamentary disposition. R.S.O. 1970, c. 499, s. 1, *amended*.

Relationship
of persons
born
outside
marriage

(2) In this Act, and in any will unless a contrary intention is shown in the will, a reference to a person in terms of a relationship to another person determined by blood or marriage shall be deemed to include a person who comes within the description notwithstanding that he or any other person through whom the relationship is traced was born outside marriage.

Application
of subs. 2

(3) Subsection 2 applies in respect of wills made on or after the 31st day of March, 1978. *New.*

PART I

TESTATE SUCCESSION

GENERAL

Power to
dispose of
property
by will

2. A person may by will devise, bequeath or dispose of all property (whether acquired before or after making his will) to which at the time of his death he is entitled either at law or in equity, including,

- (a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interests in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will; and
- (c) rights of entry, whether for conditions broken or otherwise. R.S.O. 1970, c. 499, s. 8, *amended*.

Will to be
in writing

3. A will is valid only when it is in writing. R.S.O. 1970, c. 499, s. 11 (1), *part*.

Execution

4.—(1) Subject to sections 5 and 6, a will is not valid unless,

- (a) at its end it is signed by the testator or by some other person in his presence and by his direction;

- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
- (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

(2) Where witnesses are required by this section, no form ^{Idem} of attestation is necessary. R.S.O. 1970, c. 499, s. 11 (1), *part, amended.*

5.—(1) A person who is,

- (a) a member of the Canadian Forces placed on active ^{Will of member of forces on active service} service pursuant to the *National Defence Act* (Canada); ^{R.S.C. 1970, c. N-4}
- (b) a member of any other naval, land or air force while on active service; or
- (c) a mariner or seaman when at sea or in the course of a voyage,

may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness. R.S.O. 1970, c. 499, s. 13 (1, 3).

(2) For the purpose of this section, a certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was on active service at that time, is *prima facie* evidence of that fact. ^{Certificate of active service}

(3) For the purposes of this section, if a certificate under subsection 2 is not available, a member of a naval, land or air force is deemed to be on active service after he has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service. *New.* ^{Where certificate not available}

6. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness. *New.* ^{Holograph wills}

7.—(1) In so far as the position of the signature is concerned, a will, whether holograph or not, is valid if the ^{Position of signature}

signature of the testator made either by him or the person signing for him is placed at, after, following, under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

Idem

(2) A will is not rendered invalid by the circumstance that,

- (a) the signature does not follow or is not immediately after the end of the will;
- (b) a blank space intervenes between the concluding words of the will and the signature;
- (c) the signature,
 - (i) is placed among the words of a testimonium clause or of a clause of attestation,
 - (ii) follows or is after or under a clause of attestation either with or without a blank space intervening, or
 - (iii) follows or is after, under or beside the name of a subscribing witness;
- (d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written to contain the signature.

Idem

(3) The generality of subsection 1 is not restricted by the enumeration of circumstances set out in subsection 2, but a signature in conformity with section 4, 5 or 6 or this section does not give effect to,

- (a) a disposition or direction that is underneath the signature or that follows the signature; or
- (b) a disposition or direction inserted after the signature was made. R.S.O. 1970, c. 499, s. 11 (2), *amended*.

8.—(1) A will made by a person who is under the age of ^{Wills by minors} eighteen years is not valid unless at the time of making the will the person,

(a) is or has been married;

(b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;

(c) is a member of a component of the Canadian Forces,

(i) that is referred to in the *National Defence Act* ^{R.S.C. 1970, c. N-4} (Canada) as a regular force, or

(ii) while placed on active service under the *National Defence Act* (Canada); or

(d) is a mariner or seaman and at sea or in the course of a voyage.

(2) A certificate purporting to be signed by or on behalf of ^{Certificate of active service} an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was at that time a member of a regular force or was on active service within clause *c* of subsection 1, is *prima facie* evidence of that fact.

(3) A person who has made a will under subsection 1 may, ^{Revocation} while under the age of eighteen years, revoke the will. R.S.O. 1970, c. 499, ss. 10, 13 (2), *amended*.

9. No appointment made by will in exercise of any power ^{Exercise of appointments by will} is valid unless the appointment is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O. 1970, c. 499, s. 12.

10. A will made in accordance with this Part is valid ^{Publication unnecessary} without other publication. R.S.O. 1970, c. 499, s. 14, *amended*.

Effect of
incompetency
of witness

11. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid. R.S.O. 1970, c. 499, s. 15, *amended*.

Bequests
to witness
void

12.—(1) Where a will is attested by a person to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns,

- (a) the person so attesting;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 16, *part, amended*.

Where will
signed for
testator by
another
person

(2) Where a will is signed for the testator by another person in accordance with section 4, to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest, or other disposition is void so far only as it concerns,

- (a) the person so signing;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the will is not invalid for that reason.

Where no
undue
influence

(3) Notwithstanding anything in this section, where a surrogate court is satisfied that neither the person so attesting or signing for the testator nor the spouse exercised any improper or undue influence upon the testator, the devise, bequest or other disposition or appointment is not void. *New*.

Exception

(4) Where a will is attested by at least two persons who are not within subsection 1 or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection. R.S.O. 1970, c. 499, s. 16, *part, amended*.

13. Where property is charged by a will with a debt and a creditor or the spouse of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding the charge, is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 17, *amended*. Creditor
as witness

14. A person is not incompetent as a witness to prove the execution of a will or its validity or invalidity solely because he is an executor. R.S.O. 1970, c. 499, s. 18, *amended*. Executor
as witness

15. A will or part of a will is revoked only by, Revocation

- (a) marriage, subject to section 16;
- (b) another will made in accordance with the provisions of this Part;
- (c) a writing,
 - (i) declaring an intention to revoke, and
 - (ii) made in accordance with the provisions of this Part governing making of a will; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it. R.S.O. 1970, c. 499, s. 22, *amended*.

16. A will is revoked by the marriage of the testator except where, Revocation
by marriage

- (a) there is a declaration in the will that it is made in contemplation of the marriage;
- (b) the spouse of the testator elects to take under the will, by an instrument in writing signed by the spouse and filed within one year after the testator's death in the office of the Surrogate Clerk for Ontario; or
- (c) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate. R.S.O. 1970, c. 499, s. 20, *amended*.

Change in
circum-
stances

17.—(1) Subject to subsection 2, a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances. R.S.O. 1970, c. 499, s. 21, *amended*.

Exception on
termination
of marriage

(2) Except when a contrary intention appears by the will, where, after the testator makes a will, his marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his former spouse;
- (b) an appointment of his former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator. *New*.

Alterations
in will

18.—(1) Subject to subsection 2, unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.

How
validly
made

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,

- (a) in the margin or in some other part of the will opposite or near to the alteration; or
- (b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will. R.S.O. 1970, c. 499, s. 23, *amended*.

Revival

19.—(1) A will or part of a will that has been in any manner revoked is revived only,

- (a) by a will made in accordance with the provisions of this Part; or
- (b) by a codicil that has been made in accordance with the provisions of this Part,

that shows an intention to give effect to the will or part that was revoked, or,

- (c) by re-execution thereof with the required formalities, if any.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole. R.S.O. 1970, c. 499, s. 24, *amended*. As to part
formerly
revoked

20.—(1) A conveyance of or other act relating to property that is the subject of a devise, bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death. R.S.O. 1970, c. 499, s. 25, *amended*. Operation
of will
as to
interest
left in
testator

(2) Except when a contrary intention appears by the will, where a testator at the time of his death, Rights in
place of
property
devised

- (a) has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;
- (b) has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;
- (c) has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or
- (d) has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will,

the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator. *New.*

When revived
will deemed
made

21. When a will has been revived in the manner described in section 19, the will shall be deemed to have been made at the time at which it was so revived. R.S.O. 1970, c. 499, s. 19 (10), *amended*.

Will to speak
from death

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to,

- (a) the property of the testator; and
- (b) the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator under subsection 2 of section 20. R.S.O. 1970, c. 499, s. 26 (1), *amended*.

Disposition
of property
in void
devise

23. Except when a contrary intention appears by the will, property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of,

- (a) the death of the devisee or donee in the lifetime of the testator; or
- (b) the devise or bequest being disclaimed or being contrary to law or otherwise incapable of taking effect,

is included in the residuary devise or bequest, if any, contained in the will. R.S.O. 1970, c. 499, s. 27, *amended*.

Leasehold
estates under
devise of real
property

24. Except when a contrary intention appears by the will, where a testator devises,

- (a) his real property;
- (b) his real property in a place mentioned in the will, or in the occupation of a person mentioned in the will;
- (c) real property described in a general manner; or
- (d) real property described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates. R.S.O. 1970, c. 499, s. 28, *amended*.

25.—(1) Except when a contrary intention appears by the will, a general devise of,

(a) the real property of the testator;

(b) the real property of the testator,

(i) in a place mentioned in the will, or

(ii) in the occupation of a person mentioned in the will; or

(c) real property described in a general manner,

includes any real property, or any real property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of,

(a) the personal property of the testator; or

(b) personal property described in a general manner,

includes any personal property, or any personal property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power. R.S.O. 1970, c. 499, s. 29, *amended*.

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 30, *amended*.

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the "heir" or "heirs" of the testator or of another person, the words "heir" or "heirs" mean the person to whom the beneficial interest in the property would have gone under the law of Ontario if the testator or the other person died intestate. R.S.O. 1970, c. 499, s. 31, *amended*.

28.—(1) Subject to subsection 2, in a devise or bequest of property,

(a) the words,

(i) "die without issue",

Disposition of real property over which testator has power of appointment under devise

Disposition of personal property over which testator has power of appointment under bequest

Real property passing under devise without words of limitation

Meaning of "heir" in devise of property

Import of words "die without issue", etc.

- (ii) “die without leaving issue”, or
- (iii) “have no issue”; or

- (b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

Cases to which Part not to extend

- (2) This Part does not extend to cases where the words defined in subsection 1 import,

- (a) if no issue described in a preceding gift be born; or
- (b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.
R.S.O. 1970, c. 499, s. 32, *amended*.

Devise to trustee or executor

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 33, *amended*.

When devise to trustee to pass whole estate beyond what is requisite for trust

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits,

- (a) is not given to a person for life; or
- (b) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1970, c. 499, s. 34, *amended*.

Substitutional gifts

31. Except when a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes his will,

and leaves a spouse or issue surviving the testator, the devise or bequest does not lapse but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible,

- (a) if that person had died immediately after the death of the testator;
- (b) if that person had died intestate;
- (c) if that person had died without debts; and
- (d) if section 46 had not been passed. R.S.O. 1970, c. 499, s. 36, *amended*.

32.—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in freehold or leasehold property which, at the time of his death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention,

Primary liability of real property to satisfy mortgage

- (a) the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and
- (b) every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection 1 by,

Consequence of general direction to pay debts out of personality or residue

- (a) a general direction for the payment of debts or of all the debts of the testator out of his personal estate, his residuary real or personal estate or his residuary real estate; or
- (b) a charge of debts upon that estate,

unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

Saving of mortgagee's rights

Interpre-
tation

(4) In this section, “mortgage” includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and “mortgage debt” has a meaning similarly extended. R.S.O. 1970, c. 499, s. 37, *amended*.

Undisposed
of residue

33.—(1) Where a person dies having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect of it, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

Where no
person
entitled
to residue

(2) Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Part had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator’s estate under Part II in case of an intestacy. R.S.O. 1970, c. 470, s. 55, *amended*.

CONFLICT OF LAWS

Interpre-
tation

34. In sections 36 to 41,

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land; R.S.O. 1970, c. 499, s. 19 (1).
- (c) “internal law” in relation to any place excludes the choice of law rules of that place. *New.*

Wills made
in or out
of Ontario

35. Sections 36 to 41 apply to a will made either in or out of Ontario. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

Formalities,
re interests
in land

36.—(1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.

(2) Subject to other provisions of this Part, the manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his death. R.S.O. 1970, c. 499, s. 19 (2, 3), *amended*.

37.—(1) As regards the manner and formalities of making a will of an interest in movables or in land, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where,

- (a) the will was made;
- (b) the testator was then domiciled;
- (c) the testator then had his habitual residence; or
- (d) the testator then was a national if there was in that place one body of law governing the wills of nationals. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

(2) As regards the manner and formalities of making a will of an interest in movables or in land, the following are properly made, ^{Idem}

- (a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and
- (c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power. *New*.

38. A change of domicile of the testator occurring after a will is made does not render it invalid as regards the

manner and formalities of its making or alter its construction. R.S.O. 1970, c. 499, s. 19 (5).

Construction
of will

39. Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. R.S.O. 1970, c. 499, s. 19 (6).

Movables
used in
relation
to land

40. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land. R.S.O. 1970, c. 499, s. 19 (7), *amended*.

Where law
outside
Ontario to be
applied to
will

41.—(1) Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

(a) special formalities are to be observed by testators answering a particular description; or

(b) witnesses to the making of a will are to possess certain qualifications,

shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Formal
requirements
of law

(2) In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made. *New*.

INTERNATIONAL WILLS

Effective
date

42.—(1) In this section,

(a) “convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section;

(b) “effective date” means the later of,

(i) the day on which, in accordance with Article XI of the convention, the convention enters into force, or

- (ii) the day that is six months after the date on which the Government of Canada submits to the Depositary Government under the convention a declaration that the convention extends to Ontario.

(2) On, from and after the effective date the convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an international will set out in the Annex to the convention are law in Ontario. Convention on form of international will

(3) All members of the Law Society of Upper Canada, other than student members, are designated as persons authorized to act in connection with international wills. Persons authorized under convention

(4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section. Validity of wills under other laws

(5) The Attorney General shall request the Government of Canada to submit a declaration to the Depositary Government under the convention, declaring that the convention extends to Ontario. Accession to convention

(6) As soon as the effective date is determined, the Attorney General shall publish in *The Ontario Gazette* a notice indicating the date that is the effective date for the purposes of this section. Notice of effective date

SCHEDULE

Convention Providing a Uniform Law on The Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII,

denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or,

if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I,.....(name, address and capacity),
a person authorized to act in connection with international wills

2. Certify that on.....(date) at.....(place)

3. (testator)..... (name, address, date and
place of birth)

in my presence and that of the witnesses

4. (a) (name, address, date and
place of birth)

(b) (name, address, date and
place of birth)

has declared that the attached document is his will and that he
knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his
signature previously affixed.

*(2) following a declaration of the testator stating that he was
unable to sign his will for the following reason.....

—I have mentioned this declaration on the will

*— the signature has been affixed by.....(name, address)

7. (b) the witnesses and I have signed the will;
- 8.*(c) each page of the will has been signed by.....
and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of
the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according
to the law under which I am acting;
- 11.*(f) the testator has requested me to include the following statement
concerning the safekeeping of his will;
12. PLACE
13. DATE
14. SIGNATURE and, if nec-
essary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

REPEALS

43.—(1) Except as provided in subsection 2, the following ^{Repeals} are repealed:

- (a) *The Wills Act*, being chapter 499 of the Revised Statutes of Ontario, 1970;

- (b) chapter 3 of the Statutes of Ontario, 1971;
- (c) paragraph 36 of the Schedule to chapter 98 of the Statutes of Ontario, 1971; and
- (d) section 55 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970.

Exception (2) The enactments repealed by subsection 1 continue in force as if unrepealed in respect of wills made by a testator who died before the 31st day of March, 1978.

Application of Part **44.** This Part applies to wills made before, on or after the 31st day of March, 1978 where the testator has not died before that date.

PART II

INTESTATE SUCCESSION

Intestacy where spouse and no issue **45.** Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely. *New.*

Preferential share of spouse where issue **46.**—(1) Subject to subsection 3, where a person dies intestate in respect of property having a net value of not more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to the property absolutely. R.S.O. 1970, c. 179, s. 11 (1); 1973, c. 18, s. 1 (1), *amended*.

Idem (2) Subject to subsection 3, where a person dies intestate in respect of property having a net value of more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to \$75,000 absolutely. R.S.O. 1970, c. 129, s. 11 (2); 1973, c. 18, s. 1 (2), *amended*.

Idem (3) Notwithstanding subsection 1, where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,

(a) where the spouse is entitled under the will to nothing or to property having a net value of less than \$75,000, the spouse is entitled out of the intestate property to the amount by which \$75,000 exceeds the net value of the property, if any, to which the spouse is entitled under the will;

(b) where the spouse is entitled under the will to property having a net value of more than \$75,000, subsections 1 and 2 do not apply. *New.*

(4) In this section, “net value” means the value of the property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1970, c. 129, s. 11 (5). Interpre-
tation

47.—(1) Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment under section 46, if any. Residue:
spouse and
one child

(2) Where a person dies intestate in respect of property and leaves a spouse and more than one child, the spouse is entitled to one-third of the residue of the property after payment under section 46, if any. Idem:
spouse and
two or more
children

(3) Where a child has died leaving issue living at the date of the intestate's death, the spouse's share shall be the same as if the child had been living at that date. R.S.O. 1970, c. 129, s. 31, *part, amended*. Idem:
issue of
predeceased
children

48.—(1) Subject to subsection 2, where a person dies intestate in respect of property and leaves issue surviving him, the property shall be distributed, subject to the rights of the spouse, if any, equally among his issue who are of the nearest degree in which there are issue surviving him. Issue

(2) Where any issue of the degree entitled under subsection 1 has predeceased the intestate, the share of such issue shall be distributed among his issue in the manner set out in subsection 1 and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed. Share of
predeceasing
issue

(3) Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely. Parents

(4) Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally. Brothers and
sisters

(5) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or Nephews and
nieces

sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

Next of
kin

(6) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation. R.S.O. 1970, c. 129, s. 31, *part, amended*.

Escheat

(7) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and *The Escheats Act* applies.

R.S.O. 1970,
c. 149

Degrees of
kindred

(8) For the purposes of subsection 6, degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants
conceived
but unborn

(9) For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him. *New*.

Abolition
of curtesy

49. The common law right of a widower to curtesy is hereby abolished.

Repeal of
R.S.O. 1970,
c. 129, ss. 8, 10,
11, 12, 13, 30, 31,
31a, 32

50.—(1) Sections 8 and 10, sections 11 and 12, as amended by the Statutes of Ontario, 1973, chapter 18, sections 1 and 2, sections 13, 30 and 31, section 31a, as enacted by the Statutes of Ontario, 1973, chapter 18, section 3, and section 32 of *The Devolution of Estates Act*, being chapter 129 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 129, s. 28,
re-enacted

(2) Section 28 of the said Act is repealed and the following substituted therefor:

Search
for
children
born
outside
marriage

28.—(1) A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

Liability
of
personal
representa-
tive

(2) A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

(a) he makes the inquiries referred to in subsection 1 and the entitlement of the person entitled was not

known to the personal representative at the time of the distribution; and

- (b) he makes such search of the records of the Registrar General relating to parentage as is available for the existence of persons who are entitled by virtue of a relationship traced through a birth outside marriage and the search fails to disclose the existence of such a person.

(3) Nothing in this section prejudices the right of any person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where there is no presumption or court finding of the parentage of a person born outside marriage until after the death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage.

51.—(1) Section 29 of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970,
c. 85, s. 29,
repealed

(2) Section 30 of the said Act is amended by striking out “A tenant by the curtesy” in the first line. R.S.O. 1970,
c. 85, s. 30,
amended

52. The enactments repealed or amended by sections 50 and 51 continue in force as if unrepealed or unamended in respect of a death occurring before the 31st day of March, 1978. Exception

53. This Part applies to an intestacy upon a death occurring on or after the 31st day of March, 1978. Application

PART III

DESIGNATION OF BENEFICIARIES OF INTEREST IN FUNDS OR PLANS

54. In this Part,

- (a) “participant” means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant’s death;

- (b) “plan” means,

- (i) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement

Interpre-
tation

or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents, or former agents of an employer or their dependants or beneficiaries, or

- (ii) a fund, trust, scheme, contract, or arrangement for the payment of a periodic sum for life or for a fixed or variable term,

created before or after the commencement of this Act, and includes a retirement savings plan and a home ownership savings plan as defined in the *Income Tax Act* (Canada).
New.

R.S.C. 1952,
c. 148

Designation
of
beneficiaries

55.—(1) A participant may designate a person to receive a benefit payable under a plan on the participant's death,

- (a) by an instrument signed by him or signed on his behalf by another person in his presence and by his direction; or

- (b) by will,

and may revoke the designation by either of those methods.
1973, c. 132, s. 1, *part, amended.*

Idem

- (2) A designation in a will is effective only if it relates expressly to a plan, either generally or specifically. *New.*

Revocation
of
designation

56.—(1) A revocation in a will is effective to revoke a designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

Idem

- (2) Notwithstanding section 15, a later designation revokes an earlier designation, to the extent of any inconsistency.

Idem

- (3) Revocation of a will revokes a designation in the will.

Where
will invalid

- (4) A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

Idem

- (5) A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

Earlier
designations
not revived

- (6) Revocation of a designation does not revive an earlier designation.

(7) Notwithstanding section 22, a designation or revocation in a will is effective from the time when the will is signed. Effective date
New.

57. Where a participant in a plan has designated a person to receive a benefit under the plan on the death of the participant, Payment and enforcement

(a) the person administering the plan is discharged on paying the benefit to the person designated under the latest designation made in accordance with the terms of the plan, in the absence of actual notice of a subsequent designation or revocation made under section 55 but not in accordance with the terms of the plan; and

(b) the person designated may enforce payment of the benefit payable to him under the plan but the person administering the plan may set up any defence that he could have set up against the participant or his personal representative. R.S.O. 1970, c. 85, s. 63; 1973, c. 132, s. 1, *part, amended.*

58.—(1) Where this Part is inconsistent with a plan, this Part applies, unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment where the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies. *New.* Application of Part to plan

(2) This Part does not apply to a contract or to a designation of a beneficiary to which *The Insurance Act* applies. 1973, c. 132, s. 1, *part.* Exception R.S.O. 1970, c. 224

59. Section 63, and section 64 as enacted by the Statutes of Ontario, 1973, chapter 132, section 1, of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970, c. 85, ss. 63, 64, repealed

60. Section 17 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 342, s. 17, repealed

PART IV

SURVIVORSHIP

61.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the property of each person, or any property of which he is competent to dispose, shall be disposed of as if he had survived the other or others. R.S.O. 1970, c. 45, s. 1 (1). Survivorship as to succession

Simultaneous
death of
joint
tenants

(2) Unless a contrary intention appears, where two or more persons hold legal or equitable title to property as joint tenants, or with respect to a joint account, with each other, and all of them die at the same time or in circumstances rendering it uncertain which of them survived the other or others, each person shall be deemed, for the purposes of subsection 1, to have held as tenant in common with the other or with each of the others in that property.

Provision in
will for
substitute
representative

(3) Where a will contains a provision for a substitute personal representative operative if an executor designated in the will,

(a) dies before the testator;

(b) dies at the same time as the testator; or

(c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides shall be deemed to have occurred. *New.*

Proceeds of
insurance
R.S.O. 1970,
c. 224

(4) The proceeds of a policy of insurance shall be paid in accordance with sections 190 and 268 of *The Insurance Act* and thereafter this Part applies to their disposition. R.S.O. 1970, c. 454, s. 1 (2); 1972, c. 43, s. 1, *amended.*

Repeals

62.—(1) *The Survivorship Act*, being chapter 454 of the Revised Statutes of Ontario, 1970, and *The Survivorship Amendment Act*, 1972, being chapter 43, are repealed.

Exception

(2) The enactments repealed by subsection 1 continue in force as if unrepealed in respect of deaths occurring before the 31st day of March, 1978.

Application
of Part

63. This part applies in respect of deaths occurring on or after the 31st day of March, 1978.

PART V

SUPPORT OF DEPENDANTS

Interpre-
tation

64. In this Part,

(a) “child” means a child as defined in clause *a* of subsection 1 of section 1 and includes a grand-child and a person whom the deceased has demonstrated a settled intention to treat as a child of his family but does not include a child placed in a

foster home for consideration by a person having lawful custody;

(b) “common law spouse” means either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents;

(c) “court” means the surrogate court having jurisdiction to grant letters probate or letters of administration in the estate of the deceased;

(d) “dependant” means,

(i) the spouse or common law spouse of the deceased,

(ii) a parent of the deceased,

(iii) a child of the deceased, or

(iv) a brother or sister of the deceased,

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his death;

(e) “letters probate” and “letters of administration” include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this province;

(f) “parent” includes a grandparent and a person who has demonstrated a settled intention to treat the deceased as a child of his family, but does not include a person in whose home the deceased was placed as a foster child for consideration by a person having lawful custody;

(g) “spouse” includes a person whose marriage to the deceased was terminated or declared a nullity.
R.S.O. 1970, c. 126, s. 1, *amended*.

Order for
support

65.—(1) Where a deceased, whether testate or intestate, has not made adequate provision for the proper support of his dependants or any of them, the court, on application, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them. R.S.O. 1970, c. 126, s. 2 (1), *amended*.

Applicants

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant, or by,

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipal corporation, including a metropolitan, district or regional municipality but not including an area municipality thereof; or
- (c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

Idem

(3) The adequacy of provision for support under subsection 1 shall be determined as of the date of the hearing of the application. *New*.

Suspensory
order

66. On an application by or on behalf of the dependants or any of them, the court may make an order suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide. *New*.

Application

67.—(1) An application under this Part may be made to the court by originating notice of motion in accordance with the practice of the court. R.S.O. 1970, c. 126, s. 4 (1), *amended*.

Idem

(2) Where an application for an order under section 65 is made by or on behalf of any dependant,

- (a) it may be dealt with by the court as; and
- (b) in so far as the question of limitation is concerned, it shall be deemed to be,

an application on behalf of all persons who might apply. *New*.

Limitation
period

68.—(1) Subject to subsection 2, no application for an order under section 65 may be made after six months from

the grant of letters probate of the will or of letters of administration.

(2) The court, if it considers it proper, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. R.S.O. 1970, c. 126, s. 4 (2), *amended*. Exception

69.—(1) Upon the hearing of an application under this Part, the court, Consideration
on
application

(a) shall inquire into and consider all the circumstances of the application, including,

- (i) the assets and means of the dependant,
- (ii) the capacity of the dependant to provide for his or her own support,
- (iii) the age and the physical and mental health of the dependant,
- (iv) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living,
- (v) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures,
- (vi) the proximity and duration of the dependant's relationship with the deceased,
- (vii) the contributions made by the dependant to the deceased's welfare, including indirect and non-financial contributions,
- (viii) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased's property, business or occupation,
- (ix) whether the dependant has a legal obligation to provide support for another person,
- (x) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education,
- (xi) where the dependant is a child of the age of sixteen years or more, his or her withdrawal from parental control;

- (xii) where the dependant is the spouse of the deceased, a course of conduct by the spouse during the lifetime of the deceased that is an obvious and gross repudiation of the relationship,
 - (xiii) the circumstances of the deceased at the time of death,
 - (xiv) any agreement between the deceased and the dependant,
 - (xv) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order, and
 - (xvi) the claims that any other person may have as a dependant;
- (b) in addition to the evidence adduced by the parties appearing, may direct such other evidence to be given as the court considers necessary or proper; and
- (c) may accept such evidence as the court considers proper of the deceased's reasons, so far as ascertainable,
- (i) for making the dispositions made by his will, or
 - (ii) for not making adequate provision for a dependant,

including any statement in writing signed by the deceased. R.S.O. 1970, c. 126, s. 6, *amended*.

Idem

(2) In estimating the weight to be given to a statement referred to in clause *c* of subsection 1, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. *New*.

Conditions
and
restrictions

70.—(1) In any order making provision for support of a dependant, the court may impose such conditions and restrictions as the court considers appropriate.

(2) Provision may be made out of income or capital or both and an order may provide for one or more of the following, as the court considers appropriate, ^{Contents of order}

- (a) an amount payable annually or otherwise whether for an indefinite or limited period or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned to or in trust for the benefit of the dependant, whether absolutely, for life or for a term of years;
- (d) the possession or use of any specified property by the dependant for life or such period as the court considers appropriate;
- (e) a lump sum payment to supplement or replace periodic payments;
- (f) the securing of payment under an order by a charge on property or otherwise;
- (g) the payment of a lump sum or of increased periodic payments to enable a dependant spouse or child to meet debts reasonably incurred for his or her own support prior to an application under this Part;
- (h) that all or any of the moneys payable under the order be paid to an appropriate person or agency for the benefit of the dependant;
- (i) the payment to an agency referred to in subsection 2 of section 65 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order. R.S.O. 1970, c. 126, s. 2, *amended*.

(3) Where a transfer or assignment of property is ordered, ^{Idem} the court may,

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the court may direct; or
- (b) grant a vesting order.

(4) An order under this section may be made notwithstanding any agreement or waiver to the contrary. ^{Agreement or waiver} *New.*

Notice to
parties
before order

(5) The court shall not make any order under this section until it is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing. R.S.O. 1970, c. 126, s. 5.

Exception

(6) Notwithstanding subsection 5, where, in the opinion of the court,

(a) every reasonable effort has been made to serve those entitled to notice; or

(b) after every reasonable effort has been made, it is not possible to identify one or more of the persons entitled to notice,

the court may dispense with the requirement of notice in respect of any person who has not been served. *New.*

Interim
order

71. Where an application is made under this Part and the applicant is in need of and entitled to support but any or all of the matters referred to in section 69 or 70 have not been ascertained by the court, the court may make such interim order under section 70 as it considers appropriate. 1973, c. 131, s. 1, *part*.

Inquiries
and further
orders

72. Where an order has been made under this Part, the court at any subsequent date may,

(a) inquire whether the dependant benefited by the order has become entitled to the benefit of any other provision for his support;

(b) inquire into the adequacy of the provision ordered; and

(c) discharge, vary or suspend the order, or make such other order as the court considers appropriate in the circumstances. 1973, c. 131, s. 1, *part, amended.*

Further
powers of
court

73. The court may at any time,

(a) fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;

(b) relieve such portion of the estate from further liability; and

(c) direct,

(i) the manner in which such periodic payment is to be secured, or

(ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable. *New.*

74.—(1) Where an application is made and notice thereof is served on the personal representative of the deceased, ^{Distribution stayed} he shall not, after service of the notice upon him, unless all persons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application. R.S.O. 1970, c. 126, s. 4 (3).

(2) Nothing in this Part prevents a personal representative ^{Exception} from making reasonable advances for support to dependants who are beneficiaries.

(3) Where a personal representative distributes any portion of the estate in violation of subsection 1, if any ^{Liability of personal representative} provision for support is ordered by the court to be made out of the estate, the personal representative is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Part, to be made out of the portion of the estate distributed. *New.*

75.—(1) Subject to subsection 2, the incidence of any ^{Incidence of provision ordered} provision for support ordered shall fall rateably upon that part of the deceased's estate to which the jurisdiction of the court extends.

(2) The court may order that the provision for support ^{Idem} be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to the court seems proper. *New.*

76. The court may give such further directions as it considers necessary for the purpose of giving effect to an order. ^{Further directions}
New.

Certified
copy of
order filed
with the
clerk of
the court

77.—(1) A certified copy of every order made under this Part shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

Idem

(2) A memorandum of the order shall be endorsed on or annexed to the copy, in the custody of the clerk, of the letters probate or letters of administration, as the case may be.
New.

Property
devised

78. Where a deceased,

- (a) has, in his lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath any property; and
- (b) has by his will devised or bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Part except to the extent that the value of the property in the opinion of the court exceeds the consideration therefor. R.S.O. 1970, c. 126, s. 8, *amended*.

Value of
certain
transactions
deemed part
of estate

79.—(1) Subject to section 78, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his net estate for purposes of ascertaining the value of his estate, and being available to be charged for payment by an order under clause *f* of subsection 2 of section 70,

- (a) gifts *mortis causa*;
- (b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;
- (c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of those

persons with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;

- (d) any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants;
- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
- (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him; and
- (g) any amount payable under a designation of beneficiary under Part III.

(2) The capital value of the transactions referred to in ^{Idem} clauses *b*, *c* and *d* of subsection 1 shall be deemed to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants was furnished by the deceased.

(3) Dependants claiming under this Part shall have the ^{Burden of proof} burden of establishing that the funds or property, or any portion thereof, belonged to the deceased.

(4) Where the other party to a transaction described in ^{Idem} clause *c* or *d* of subsection 1 is a dependant, he shall have the burden of establishing the amount of his contribution, if any.

(5) This section does not prohibit any corporation or ^{Exception} person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled

thereto unless there has been personally served on the corporation or person a certified copy of a suspensory order made under section 66 enjoining such payment or transfer.

Suspensory
order

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of a suspensory order shall be a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period the order is in force.

Rights of
creditor

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights. *New.*

Validity of
mortgage,
etc.

80. Where provision for the support of a dependant is ordered under this Part, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid. *New.*

Persons in
institutions
under
R.S.O. 1970,
c. 269,
1974, c. 2

81.—(1) Where a person by whom, or on whose behalf, an application may be made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974* at the time of the deceased's death or at any time before the application under this Part is heard and disposed of, notice of the application for letters probate or letters of administration shall be served upon the Public Trustee on behalf of that person, and the time within which the Public Trustee may make an application under this Part runs from the date of the service of the notice.

Notice to
Public
Trustee

(2) Where a person interested in the estate in respect of which an application is made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974*, notice of the application shall in every case be served upon the Public Trustee, who has the right to appear and be heard upon the application. R.S.O. 1970, c. 126, s. 4 (5, 6), *amended.*

Removal
into
Supreme
Court

82. At any time before the hearing of an application, a judge of the Supreme Court upon motion on behalf of the personal representative of the deceased, the applicant, or any other person interested, and upon being satisfied that the application is of such a nature and of such importance as to render it proper that it should be disposed of in the Supreme Court and the property of

the deceased exceeds \$20,000, may by order direct that the application be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court who has the like powers and shall proceed in the like manner as the court on an application under this Part. R.S.O. 1970, c. 126, s. 4 (4), *amended*.

83. The court may direct that the costs of the application ^{Costs} be paid out of the estate or otherwise as it thinks proper, and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any support applied for or directed by its order. R.S.O. 1970, c. 126, s. 11.

84. An appeal lies to the Supreme Court from any order ^{Appeal} of the court made under this Part. R.S.O. 1970, c. 126, s. 12 (1), *amended*.

85.—(1) An order or direction made under this Part may ^{Enforcement} be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

(2) Where a court orders security for the payment ^{Realization of security} under an order under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. R.S.O. 1970, c. 126, s. 12, *amended*.

86. This Part binds the Crown. *New.* ^{Crown bound}

87.—(1) Subject to subsection 2, *The Dependants' Relief* ^{Repeals} *Act*, being chapter 126 of the Revised Statutes of Ontario, 1970, and *The Dependants' Relief Amendment Act, 1973*, being chapter 131, are repealed.

(2) The enactments repealed by subsection 1 continue in ^{Exception} force as if unrepealed in respect of applications where the deceased died before the 31st day of March, 1978.

88. This Part does not apply where the deceased died ^{Application of Part} before the 31st day of March, 1978, but an application may be made under section 72 regardless of the time of the deceased's death.

PART VI

RIGHTS OF COMMON LAW SPOUSES
AND CHILDREN BORN OUTSIDE MARRIAGE

1971, c. 51,
s. 1 (1) (b, c),
re-enacted

89.—(1) Clauses *b* and *c* of subsection 1 of section 1 of *The Compensation for Victims of Crime Act, 1971*, being chapter 51, are repealed and the following substituted therefor:

R.S.O. 1970,
c. 64

(b) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a grandchild of the victim and a person whom the victim has demonstrated a settled intention to treat as a child of his family, and includes a child of the victim conceived before and born alive after the victim’s death, but does not include a child placed in the home of the victim as a foster child for consideration by a person having lawful custody;

(c) “dependant” means,

(i) the spouse of the victim,

(ii) a parent of the victim, including a grandparent and a person who has demonstrated a settled intention to treat the victim as a child of his family, but does not include a person in whose home the victim was placed as a foster child for consideration by a person having lawful custody,

(iii) a child of the victim,

(iv) a brother or sister of the victim, and

(v) any other relative of the victim,

who was in whole or in part dependent on the victim for support at the time of his death.

1971,
c. 51, s. 1 (2),
re-enacted

(2) Subsection 2 of the said section 1 is repealed and the following substituted therefor:

Unmarried
spouses

(2) The Board may direct that a person was the spouse of a deceased victim for the purposes of this Act where the Board finds that,

SECTION 89. The definition of child is standardized with the language used elsewhere in the Bill and the definition of dependants expressly includes certain degrees of relationship implicit in what is now referred to as "other relatives". The definition of recognizable common law marriages is standardized with the language used elsewhere in the Bill.

SECTION 90—Subsection 1. The amendment permits gifts made to or by reference to the spouse of a person to take effect where the spouse is a common law spouse, as defined, in the same way as a gift made to or by reference to a legally married spouse.

Subsection 2. The amendment permits gifts made to issue of an unborn person to take effect where the issue is born outside marriage.

(a) they were a man and a woman who, not being married to each other, had been cohabiting immediately before the death of the victim,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents; or

(b) their marriage was terminated by a decree absolute of divorce or was declared a nullity and the spouse was a person to whom the victim was providing support or was under a legal obligation to provide support immediately before his death.

(3) Subject to section 6 of *The Compensation for Victims of Crime Act, 1971*, this section applies to applications whether the victim died before, on or after the 31st day of March, 1978. 1971, c. 51

90.—(1) Section 9 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970, c. 343, s. 9, amended

(2) For the purposes of subsection 1, “spouse” includes either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them, “spouse” defined

(a) continuously for a period of not less than five years; or

(b) in a relationship of some permanence where there is a child born of whom they are the natural parents.

(2) Section 17 of the said Act is amended by striking out “the unborn child or other” in the second and third lines and inserting in lieu thereof “any unborn”. R.S.O. 1970, c. 343, s. 17, amended

(3) Section 17 of the said Act is further amended by adding thereto the following subsection. R.S.O. 1970, c. 343, s. 17, amended

(2) For the purposes of subsection 1, “issue” means issue of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act*. “issue” defined
R.S.O. 1970, c. 64

GENERAL

Commence-
ment

91. This Act comes into force on the 31st day of March, 1978.

Short title

92. The short title of this Act is *The Succession Law Reform Act, 1977*.

An Act to reform the Law respecting
Succession to the Estates of Deceased
Persons

1st Reading

October 17th, 1977

2nd Reading

October 18th, 1977

3rd Reading

THE HON. R. McMURTRY
Attorney General

(Reprinted as amended by the
Committee of the Whole House)

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BILL 60

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the Law respecting
Succession to the Estates of Deceased Persons**

THE HON. R. MCMURTRY
Attorney General



BILL 60

1977

An Act to reform the Law respecting Succession to the Estates of Deceased Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a child conceived before and born alive after the death of the parent; R.S.O. 1970,
c. 64
- (b) “grandchild” means the child of a child;
- (c) “issue” means any lineal descendant of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes issue conceived before and born alive after the death of the person;
- (d) “parent” means the father or mother of a child;
- (e) “personal representative” means an executor, an administrator or an administrator with will annexed;
- (f) “property” means real or personal property;
- (g) “will” includes,
 - (i) a testament,
 - (ii) a codicil,
 - (iii) an appointment by will or by writing in the nature of a will in exercise of a power, and
 - (iv) any other testamentary disposition. R.S.O.
1970, c. 499, s. 1, *amended*.

Relationship
of persons
born
outside
marriage

(2) In this Act, and in any will unless a contrary intention is shown in the will, a reference to a person in terms of a relationship to another person determined by blood or marriage shall be deemed to include a person who comes within the description notwithstanding that he or any other person through whom the relationship is traced was born outside marriage.

Application
of subs. 2

(3) Subsection 2 applies in respect of wills made on or after the 31st day of March, 1978. *New.*

PART I

TESTATE SUCCESSION

GENERAL

Power to
dispose of
property
by will

2. A person may by will devise, bequeath or dispose of all property (whether acquired before or after making his will) to which at the time of his death he is entitled either at law or in equity, including,

- (a) estates *pur autre vie*, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interests in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will; and
- (c) rights of entry, whether for conditions broken or otherwise. R.S.O. 1970, c. 499, s. 8, *amended*.

Will to be
in writing

3. A will is valid only when it is in writing. R.S.O. 1970, c. 499, s. 11 (1), *part*.

Execution

4.—(1) Subject to sections 5 and 6, a will is not valid unless,

- (a) at its end it is signed by the testator or by some other person in his presence and by his direction;

- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
- (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

(2) Where witnesses are required by this section, no form ^{Idem} of attestation is necessary. R.S.O. 1970, c. 499, s. 11 (1), *part, amended.*

5.—(1) A person who is,

- (a) a member of the Canadian Forces placed on active service pursuant to the *National Defence Act* (Canada); ^{Will of member of forces on active service} R.S.C. 1970, c. N-4,
- (b) a member of any other naval, land or air force while on active service; or
- (c) a mariner or seaman when at sea or in the course of a voyage,

may make a will by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement of the presence of or attestation or signature by a witness. R.S.O. 1970, c. 499, s. 13 (1, 3).

(2) For the purpose of this section, a certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was on active service at that time, is *prima facie* evidence of that fact. ^{Certificate of active service}

(3) For the purposes of this section, if a certificate under subsection 2 is not available, a member of a naval, land or air force is deemed to be on active service after he has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service. ^{Where certificate not available} *New.*

6. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness. ^{Holograph wills} *New.*

7.—(1) In so far as the position of the signature is concerned, a will, whether holograph or not, is valid if the ^{Position of signature}

signature of the testator made either by him or the person signing for him is placed at, after, following, under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

Idem

(2) A will is not rendered invalid by the circumstance that,

- (a) the signature does not follow or is not immediately after the end of the will;
- (b) a blank space intervenes between the concluding words of the will and the signature;
- (c) the signature,
 - (i) is placed among the words of a testimonium clause or of a clause of attestation,
 - (ii) follows or is after or under a clause of attestation either with or without a blank space intervening, or
 - (iii) follows or is after, under or beside the name of a subscribing witness;
- (d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written to contain the signature.

Idem

(3) The generality of subsection 1 is not restricted by the enumeration of circumstances set out in subsection 2, but a signature in conformity with section 4, 5 or 6 or this section does not give effect to,

- (a) a disposition or direction that is underneath the signature or that follows the signature; or
- (b) a disposition or direction inserted after the signature was made. R.S.O. 1970, c. 499, s. 11 (2), *amended*.

8.—(1) A will made by a person who is under the age of ^{Wills by minors} eighteen years is not valid unless at the time of making the will the person,

(a) is or has been married;

(b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;

(c) is a member of a component of the Canadian Forces,

(i) that is referred to in the *National Defence Act* ^{R.S.C. 1970, c. N-4} (Canada) as a regular force, or

(ii) while placed on active service under the *National Defence Act* (Canada); or

(d) is a mariner or seaman and at sea or in the course of a voyage.

(2) A certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was at that time a member of a regular force or was on active service within clause c of subsection 1, is *prima facie* evidence of that fact. ^{Certificate of active service}

(3) A person who has made a will under subsection 1 may, ^{Revocation} while under the age of eighteen years, revoke the will. R.S.O. 1970, c. 499, ss. 10, 13 (2), *amended*.

9. No appointment made by will in exercise of any power is valid unless the appointment is executed in the manner ^{Exercise of appointments by will} hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O. 1970, c. 499, s. 12.

10. A will made in accordance with this Part is valid ^{Publication unnecessary} without other publication. R.S.O. 1970, c. 499, s. 14, *amended*.

Effect of
incompetency
of witness

11. Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid. R.S.O. 1970, c. 499, s. 15, *amended*.

Requests
to witness
void

12.—(1) Where a will is attested by a person to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns,

- (a) the person so attesting;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 16, *part, amended*.

Where will
signed for
testator by
another
person

(2) Where a will is signed for the testator by another person in accordance with section 4, to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest, or other disposition is void so far only as it concerns,

- (a) the person so signing;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the will is not invalid for that reason.

Where no
undue
influence

(3) Notwithstanding anything in this section, where a surrogate court is satisfied that neither the person so attesting or signing for the testator nor the spouse exercised any improper or undue influence upon the testator, the devise, bequest or other disposition or appointment is not void. *New*.

Exception

(4) Where a will is attested by at least two persons who are not within subsection 1 or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection. R.S.O. 1970, c. 499, s. 16, *part, amended*.

13. Where property is charged by a will with a debt and a creditor or the spouse of a creditor whose debt is so charged attests a will, the person so attesting, notwithstanding the charge, is a competent witness to prove the execution of the will or its validity or invalidity. R.S.O. 1970, c. 499, s. 17, *amended*. Creditor
as witness

14. A person is not incompetent as a witness to prove the execution of a will or its validity or invalidity solely because he is an executor. R.S.O. 1970, c. 499, s. 18, *amended*. Executor
as witness

15. A will or part of a will is revoked only by, Revocation

- (a) marriage, subject to section 16;
- (b) another will made in accordance with the provisions of this Part;
- (c) a writing,
 - (i) declaring an intention to revoke, and
 - (ii) made in accordance with the provisions of this Part governing making of a will; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his presence and by his direction with the intention of revoking it. R.S.O. 1970, c. 499, s. 22, *amended*.

16. A will is revoked by the marriage of the testator except where, Revocation
by marriage

- (a) there is a declaration in the will that it is made in contemplation of the marriage;
- (b) the spouse of the testator elects to take under the will, by an instrument in writing signed by the spouse and filed within one year after the testator's death in the office of the Surrogate Clerk for Ontario; or
- (c) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he died intestate. R.S.O. 1970, c. 499, s. 20, *amended*.

Change in
circum-
stances

17.—(1) Subject to subsection 2, a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances. R.S.O. 1970, c. 499, s. 21, *amended*.

Exception on
termination
of marriage

(2) Except when a contrary intention appears by the will, where, after the testator makes a will, his marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his former spouse;
- (b) an appointment of his former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator. *New*.

Alterations
in will

18.—(1) Subject to subsection 2, unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.

How
validly
made

(2) An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,

- (a) in the margin or in some other part of the will opposite or near to the alteration; or
- (b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will. R.S.O. 1970, c. 499, s. 23, *amended*.

Revival

19.—(1) A will or part of a will that has been in any manner revoked is revived only,

- (a) by a will made in accordance with the provisions of this Part; or
- (b) by a codicil that has been made in accordance with the provisions of this Part,

that shows an intention to give effect to the will or part that was revoked, or,

- (c) by re-execution thereof with the required formalities, if any.

(2) Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole. R.S.O. 1970, c. 499, s. 24, *amended*. As to part formerly revoked

20.—(1) A conveyance of or other act relating to property that is the subject of a devise, bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his death. R.S.O. 1970, c. 499, s. 25, *amended*. Operation of will as to interest left in testator

(2) Except when a contrary intention appears by the will, where a testator at the time of his death, Rights in place of property devised

- (a) has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;
- (b) has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;
- (c) has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or
- (d) has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will,

the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator. *New.*

When revived
will deemed
made

21. When a will has been revived in the manner described in section 19, the will shall be deemed to have been made at the time at which it was so revived. R.S.O. 1970, c. 499, s. 19 (10), *amended*.

Will to speak
from death

22. Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to,

- (a) the property of the testator; and
- (b) the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator under subsection 2 of section 20. R.S.O. 1970, c. 499, s. 26 (1), *amended*.

Disposition
of property
in void
devise

23. Except when a contrary intention appears by the will, property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of,

- (a) the death of the devisee or donee in the lifetime of the testator; or
- (b) the devise or bequest being disclaimed or being contrary to law or otherwise incapable of taking effect,

is included in the residuary devise or bequest, if any, contained in the will. R.S.O. 1970, c. 499, s. 27, *amended*.

Leasehold
estates under
devise of real
property

24. Except when a contrary intention appears by the will, where a testator devises,

- (a) his real property;
- (b) his real property in a place mentioned in the will, or in the occupation of a person mentioned in the will;
- (c) real property described in a general manner; or
- (d) real property described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates. R.S.O. 1970, c. 499, s. 28, *amended*.

25.—(1) Except when a contrary intention appears by the will, a general devise of, Disposition of real property over which testator has power of appointment under devise

(a) the real property of the testator;

(b) the real property of the testator,

(i) in a place mentioned in the will, or

(ii) in the occupation of a person mentioned in the will; or

(c) real property described in a general manner,

includes any real property, or any real property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power.

(2) Except when a contrary intention appears by the will, a bequest of, Disposition of personal property over which testator has power of appointment under bequest

(a) the personal property of the testator; or

(b) personal property described in a general manner,

includes any personal property, or any personal property to which the description extends, which he has power to appoint in any manner he thinks proper and operates as an execution of the power. R.S.O. 1970, c. 499, s. 29, *amended*.

26. Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 30, *amended*. Real property passing under devise without words of limitation

27. Except when a contrary intention appears by the will, where property is devised or bequeathed to the "heir" or "heirs" of the testator or of another person, the words "heir" or "heirs" mean the person to whom the beneficial interest in the property would have gone under the law of Ontario if the testator or the other person died intestate. R.S.O. 1970, c. 499, s. 31, *amended*. Meaning of words "heir" in devise of property

28.—(1) Subject to subsection 2, in a devise or bequest of property, Import of words "die without issue", etc.

(a) the words,

(i) "die without issue",

- (ii) “die without leaving issue”, or
- (iii) “have no issue”; or

- (b) other words importing either a want or failure of issue of a person in his lifetime or at the time of his death or an indefinite failure of his issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his issue unless a contrary intention appears by the will.

Cases to which Part not to extend

(2) This Part does not extend to cases where the words defined in subsection 1 import,

- (a) if no issue described in a preceding gift be born; or
- (b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue. R.S.O. 1970, c. 499, s. 32, *amended*.

Devise to trustee or executor

29. Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property. R.S.O. 1970, c. 499, s. 33, *amended*.

When devise to trustee to pass whole estate beyond what is requisite for trust

30. Where real property is devised to a trustee without express limitation of the estate to be taken by him and the beneficial interest in the real property or in the surplus rents and profits,

- (a) is not given to a person for life; or
- (b) is given to a person for life but the purpose of the trust may continue beyond his life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1970, c. 499, s. 34, *amended*.

Substitutional gifts

31. Except when a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes his will,

and leaves a spouse or issue surviving the testator, the devise or bequest does not lapse but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible,

- (a) if that person had died immediately after the death of the testator;
- (b) if that person had died intestate;
- (c) if that person had died without debts; and
- (d) if section 46 had not been passed. R.S.O. 1970, c. 499, s. 36, *amended*.

32.—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in freehold or leasehold property which, at the time of his death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention,

Primary liability of real property to satisfy mortgage

- (a) the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and
- (b) every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) A testator does not signify a contrary or other intention within subsection 1 by,

Consequence of general direction to pay debts out of personality or residue

- (a) a general direction for the payment of debts or of all the debts of the testator out of his personal estate, his residuary real or personal estate or his residuary real estate; or
- (b) a charge of debts upon that estate,

unless he further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

Saving of mortgagee's rights

Interpre-
tation

(4) In this section, “mortgage” includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and “mortgage debt” has a meaning similarly extended. R.S.O. 1970, c. 499, s. 37, *amended*.

Undisposed
of residue

33.—(1) Where a person dies having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect of it, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

Where no
person
entitled
to residue

(2) Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Part had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator’s estate under Part II in case of an intestacy. R.S.O. 1970, c. 470, s. 55, *amended*.

CONFLICT OF LAWS

Interpre-
tation

34. In sections 36 to 41,

- (a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;
- (b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land; R.S.O. 1970, c. 499, s. 19 (1).
- (c) “internal law” in relation to any place excludes the choice of law rules of that place. *New*.

Wills made
in or out
of Ontario

35. Sections 36 to 41 apply to a will made either in or out of Ontario. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

Formalities,
re interests
in land

36.—(1) The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.

(2) Subject to other provisions of this Part, the manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his death. R.S.O. 1970, c. 499, s. 19 (2, 3), *amended*.

37.—(1) As regards the manner and formalities of making a will of an interest in movables or in land, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where, Formalities re interests in movables or in land

- (a) the will was made;
- (b) the testator was then domiciled;
- (c) the testator then had his habitual residence; or
- (d) the testator then was a national if there was in that place one body of law governing the wills of nationals. R.S.O. 1970, c. 499, s. 19 (4), *amended*.

(2) As regards the manner and formalities of making a will of an interest in movables or in land, the following are properly made, Idem

- (a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and
- (c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power. *New.*

38. A change of domicile of the testator occurring after a will is made does not render it invalid as regards the Change of domicile

manner and formalities of its making or alter its construction. R.S.O. 1970, c. 499, s. 19 (5).

Construction
of will

39. Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables. R.S.O. 1970, c. 499, s. 19 (6).

Movables
used in
relation
to land

40. Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land. R.S.O. 1970, c. 499, s. 19 (7), *amended*.

Where law
outside
Ontario to be
applied to
will

41.—(1) Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

- (a) special formalities are to be observed by testators answering a particular description; or
- (b) witnesses to the making of a will are to possess certain qualifications,

shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Formal
requirements
of law

(2) In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made. *New*.

INTERNATIONAL WILLS

Effective
date

42.—(1) In this section,

- (a) “convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section;
- (b) “effective date” means the later of,
 - (i) the day on which, in accordance with Article XI of the convention, the convention enters into force, or

- (ii) the day that is six months after the date on which the Government of Canada submits to the Depositary Government under the convention a declaration that the convention extends to Ontario.

(2) On, from and after the effective date the convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an international will set out in the Annex to the convention are law in Ontario. Convention on form of international will

(3) All members of the Law Society of Upper Canada, other than student members, are designated as persons authorized to act in connection with international wills. Persons authorized under convention

(4) Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section. Validity of wills under other laws

(5) The Attorney General shall request the Government of Canada to submit a declaration to the Depositary Government under the convention, declaring that the convention extends to Ontario. Accession to convention

(6) As soon as the effective date is determined, the Attorney General shall publish in *The Ontario Gazette* a notice indicating the date that is the effective date for the purposes of this section. Notice of effective date

SCHEDULE

Convention Providing a Uniform Law on The Form of an International Will

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an "international will" which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII,

denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, paragraph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;
- (h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

ANNEX

Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.

2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.

3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or,

if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. The date of the will shall be the date of its signature by the authorized person.

2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, (name, address and capacity),
a person authorized to act in connection with international wills
2. Certify that on (date) at (place)
3. (testator) (name, address, date and
place of birth)

in my presence and that of the witnesses

4. (a) (name, address, date and
place of birth)
- (b) (name, address, date and
place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason.....

—I have mentioned this declaration on the will

* — the signature has been affixed by (name, address)

7. (b) the witnesses and I have signed the will;
8. *(c) each page of the will has been signed by and numbered;
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:
12. PLACE
13. DATE
14. SIGNATURE and, if necessary, SEAL

*To be completed if appropriate.

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

REPEALS

43.—(1) Except as provided in subsection 2, the following ^{Repeals} are repealed:

- (a) *The Wills Act*, being chapter 499 of the Revised Statutes of Ontario, 1970;

- (b) chapter 3 of the Statutes of Ontario, 1971;
- (c) paragraph 36 of the Schedule to chapter 98 of the Statutes of Ontario, 1971; and
- (d) section 55 of *The Trustee Act*, being chapter 470 of the Revised Statutes of Ontario, 1970.

Exception (2) The enactments repealed by subsection 1 continue in force as if unrepealed in respect of wills made by a testator who died before the 31st day of March, 1978.

Application of Part **44.** This Part applies to wills made before, on or after the 31st day of March, 1978 where the testator has not died before that date.

PART II

INTESTATE SUCCESSION

Intestacy where spouse and no issue **45.** Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely. *New.*

Preferential share of spouse where issue **46.**—(1) Subject to subsection 3, where a person dies intestate in respect of property having a net value of not more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to the property absolutely. R.S.O. 1970, c. 179, s. 11 (1); 1973, c. 18, s. 1 (1), *amended.*

Idem (2) Subject to subsection 3, where a person dies intestate in respect of property having a net value of more than \$75,000 and is survived by a spouse and issue, the spouse is entitled to \$75,000 absolutely. R.S.O. 1970, c. 129, s. 11 (2); 1973, c. 18, s. 1 (2), *amended.*

Idem (3) Notwithstanding subsection 1, where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,

(a) where the spouse is entitled under the will to nothing or to property having a net value of less than \$75,000, the spouse is entitled out of the intestate property to the amount by which \$75,000 exceeds the net value of the property, if any, to which the spouse is entitled under the will;

(b) where the spouse is entitled under the will to property having a net value of more than \$75,000, subsections 1 and 2 do not apply. *New.*

(4) In this section, “net value” means the value of the property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1970, c. 129, s. 11 (5). Interpretation

47.—(1) Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment under section 46, if any. Residue: spouse and one child

(2) Where a person dies intestate in respect of property and leaves a spouse and more than one child, the spouse is entitled to one-third of the residue of the property after payment under section 46, if any. Idem: spouse and two or more children

(3) Where a child has died leaving issue living at the date of the intestate’s death, the spouse’s share shall be the same as if the child had been living at that date. R.S.O. 1970, c. 129, s. 31, *part, amended*. Idem: issue of predeceased children

48.—(1) Subject to subsection 2, where a person dies intestate in respect of property and leaves issue surviving him, the property shall be distributed, subject to the rights of the spouse, if any, equally among his issue who are of the nearest degree in which there are issue surviving him. Issue

(2) Where any issue of the degree entitled under subsection 1 has predeceased the intestate, the share of such issue shall be distributed among his issue in the manner set out in subsection 1 and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed. Share of predeceasing issue

(3) Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely. Parents

(4) Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally. Brothers and sisters

(5) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or Nephews and nieces

sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

Next of
kin

(6) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation. R.S.O. 1970, c. 129, s. 31, *part, amended*.

Escheat

(7) Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and *The Escheats Act* applies.

R.S.O. 1970,
c. 149

Degrees of
kindred

(8) For the purposes of subsection 6, degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants
conceived
but unborn

(9) For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him. *New*.

Abolition
of curtesy

49. The common law right of a widower to curtesy is hereby abolished.

Repeal of
R.S.O. 1970,
c. 129, ss. 8, 10,
11, 12, 13, 30, 31,
31a, 32

50.—(1) Sections 8 and 10, sections 11 and 12, as amended by the Statutes of Ontario, 1973, chapter 18, sections 1 and 2, sections 13, 30 and 31, section 31a, as enacted by the Statutes of Ontario, 1973, chapter 18, section 3, and section 32 of *The Devolution of Estates Act*, being chapter 129 of the Revised Statutes of Ontario, 1970, are repealed.

R.S.O. 1970,
c. 129, s. 28,
re-enacted

(2) Section 28 of the said Act is repealed and the following substituted therefor:

Search
for
children
born
outside
marriage

28.—(1) A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

Liability
of
personal
representa-
tive

(2) A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

(a) he makes the inquiries referred to in subsection 1 and the entitlement of the person entitled was not

known to the personal representative at the time of the distribution; and

- (b) he makes such search of the records of the Registrar General relating to parentage as is available for the existence of persons who are entitled by virtue of a relationship traced through a birth outside marriage and the search fails to disclose the existence of such a person.

(3) Nothing in this section prejudices the right of any person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where there is no presumption or court finding of the parentage of a person born outside marriage until after the death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage. ^{Saving rights}

51.—(1) Section 29 of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes of Ontario, 1970, is repealed. ^{R.S.O. 1970, c. 85, s. 29, repealed}

(2) Section 30 of the said Act is amended by striking out “A tenant by the curtesy” in the first line. ^{R.S.O. 1970, c. 85, s. 30, amended}

52. The enactments repealed or amended by sections 50 and 51 continue in force as if unrepealed or unamended in respect of a death occurring before the 31st day of March, 1978. ^{Exception}

53. This Part applies to an intestacy upon a death occurring on or after the 31st day of March, 1978. ^{Application}

PART III

DESIGNATION OF BENEFICIARIES OF INTEREST IN FUNDS OR PLANS

54. In this Part,

<sup>Interpre-
tation</sup>

- (a) “participant” means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant’s death;

- (b) “plan” means,

- (i) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement

or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents, or former agents of an employer or their dependants or beneficiaries, or

- (ii) a fund, trust, scheme, contract, or arrangement for the payment of a periodic sum for life or for a fixed or variable term,

created before or after the commencement of this Act, and includes a retirement savings plan and a home ownership savings plan as defined in the *Income Tax Act* (Canada).
New.

R.S.C. 1952.
c. 148

Designation
of
beneficiaries

55.—(1) A participant may designate a person to receive a benefit payable under a plan on the participant's death,

- (a) by an instrument signed by him or signed on his behalf by another person in his presence and by his direction; or

- (b) by will,

and may revoke the designation by either of those methods. 1973, c. 132, s. 1, *part, amended.*

Idem

(2) A designation in a will is effective only if it relates expressly to a plan, either generally or specifically. *New.*

Revocation
of
designation

56.—(1) A revocation in a will is effective to revoke a designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

Idem

(2) Notwithstanding section 15, a later designation revokes an earlier designation, to the extent of any inconsistency.

Idem

(3) Revocation of a will revokes a designation in the will.

Where
will invalid

(4) A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

Idem

(5) A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

Earlier
designations
not revived

(6) Revocation of a designation does not revive an earlier designation.

(7) Notwithstanding section 22, a designation or revocation in a will is effective from the time when the will is signed. Effective date
New.

57. Where a participant in a plan has designated a person to receive a benefit under the plan on the death of the participant, Payment and enforcement

- (a) the person administering the plan is discharged on paying the benefit to the person designated under the latest designation made in accordance with the terms of the plan, in the absence of actual notice of a subsequent designation or revocation made under section 55 but not in accordance with the terms of the plan; and
- (b) the person designated may enforce payment of the benefit payable to him under the plan but the person administering the plan may set up any defence that he could have set up against the participant or his personal representative. R.S.O. 1970, c. 85, s. 63; 1973, c. 132, s. 1, *part, amended.*

58.—(1) Where this Part is inconsistent with a plan, this Part applies, unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment where the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies. Application of Part to plan *New.*

(2) This Part does not apply to a contract or to a designation of a beneficiary to which *The Insurance Act* applies. 1973, c. 132, s. 1, *part.* Exception R.S.O. 1970, c. 224

59. Section 63, and section 64 as enacted by the Statutes of Ontario, 1973, chapter 132, section 1, of *The Conveyancing and Law of Property Act*, being chapter 85 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970, c. 85, ss. 63, 64, repealed

60. Section 17 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970, c. 342, s. 17, repealed

PART IV

SURVIVORSHIP

61.—(1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the property of each person, or any property of which he is competent to dispose, shall be disposed of as if he had survived the other or others. R.S.O. 1970, c. 45, s. 1 (1). Survivorship as to succession

Simultaneous
death of
joint
tenants

(2) Unless a contrary intention appears, where two or more persons hold legal or equitable title to property as joint tenants, or with respect to a joint account, with each other, and all of them die at the same time or in circumstances rendering it uncertain which of them survived the other or others, each person shall be deemed, for the purposes of subsection 1, to have held as tenant in common with the other or with each of the others in that property.

Provision in
will for
substitute
representative

(3) Where a will contains a provision for a substitute personal representative operative if an executor designated in the will,

(a) dies before the testator;

(b) dies at the same time as the testator; or

(c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides shall be deemed to have occurred. *New.*

Proceeds of
insurance
R.S.O. 1970,
c. 224

(4) The proceeds of a policy of insurance shall be paid in accordance with sections 190 and 268 of *The Insurance Act* and thereafter this Part applies to their disposition. R.S.O. 1970, c. 454, s. 1 (2); 1972, c. 43, s. 1, *amended*.

Repeals

62.—(1) *The Survivorship Act*, being chapter 454 of the Revised Statutes of Ontario, 1970, and *The Survivorship Amendment Act, 1972*, being chapter 43, are repealed.

Exception

(2) The enactments repealed by subsection 1 continue in force as if unrepealed in respect of deaths occurring before the 31st day of March, 1978.

Application
of Part

63. This part applies in respect of deaths occurring on or after the 31st day of March, 1978.

PART V

SUPPORT OF DEPENDANTS

Interpre-
tation

64. In this Part,

(a) “child” means a child as defined in clause *a* of subsection 1 of section 1 and includes a grandchild and a person whom the deceased has demonstrated a settled intention to treat as a child of his family but does not include a child placed in a

foster home for consideration by a person having lawful custody;

- (b) "common law spouse" means either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them,
 - (i) continuously for a period of not less than five years, or
 - (ii) in a relationship of some permanence where there is a child born of whom they are the natural parents;
- (c) "court" means the surrogate court having jurisdiction to grant letters probate or letters of administration in the estate of the deceased;
- (d) "dependant" means,
 - (i) the spouse or common law spouse of the deceased,
 - (ii) a parent of the deceased,
 - (iii) a child of the deceased, or
 - (iv) a brother or sister of the deceased,

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his death;
- (e) "letters probate" and "letters of administration" include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this province;
- (f) "parent" includes a grandparent and a person who has demonstrated a settled intention to treat the deceased as a child of his family, but does not include a person in whose home the deceased was placed as a foster child for consideration by a person having lawful custody;
- (g) "spouse" includes a person whose marriage to the deceased was terminated or declared a nullity.
R.S.O. 1970, c. 126, s. 1, *amended*.

Order for
support

65.—(1) Where a deceased, whether testate or intestate, has not made adequate provision for the proper support of his dependants or any of them, the court, on application, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them. R.S.O. 1970, c. 126, s. 2 (1), *amended*.

Applicants

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant, or by,

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipal corporation, including a metropolitan, district or regional municipality but not including an area municipality thereof; or
- (c) a children's aid society,

where the Ministry, municipality or society is providing an allowance or benefit in respect of the support of the dependant.

Idem

(3) The adequacy of provision for support under subsection 1 shall be determined as of the date of the hearing of the application. *New*.

Suspensory
order

66. On an application by or on behalf of the dependants or any of them, the court may make an order suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide. *New*.

Application

67.—(1) An application under this Part may be made to the court by originating notice of motion in accordance with the practice of the court. R.S.O. 1970, c. 126, s. 4 (1), *amended*.

Idem

(2) Where an application for an order under section 65 is made by or on behalf of any dependant,

- (a) it may be dealt with by the court as; and
- (b) in so far as the question of limitation is concerned, it shall be deemed to be,

an application on behalf of all persons who might apply. *New*.

Limitation
period

68.—(1) Subject to subsection 2, no application for an order under section 65 may be made after six months from

the grant of letters probate of the will or of letters of administration.

(2) The court, if it considers it proper, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. R.S.O. 1970, c. 126, s. 4 (2), *amended*. Exception

69.—(1) Upon the hearing of an application under this Part, the court, Consideration on application

(a) shall inquire into and consider all the circumstances of the application, including,

- (i) the assets and means of the dependant,
- (ii) the capacity of the dependant to provide for his or her own support,
- (iii) the age and the physical and mental health of the dependant,
- (iv) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living,
- (v) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures,
- (vi) the proximity and duration of the dependant's relationship with the deceased,
- (vii) the contributions made by the dependant to the deceased's welfare, including indirect and non-financial contributions,
- (viii) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased's property, business or occupation,
- (ix) whether the dependant has a legal obligation to provide support for another person,
- (x) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education,
- (xi) where the dependant is a child of the age of sixteen years or more, his or her withdrawal from parental control;

- (xii) where the dependant is the spouse of the deceased, a course of conduct by the spouse during the lifetime of the deceased that is an obvious and gross repudiation of the relationship,
 - (xiii) the circumstances of the deceased at the time of death,
 - (xiv) any agreement between the deceased and the dependant,
 - (xv) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order, and
 - (xvi) the claims that any other person may have as a dependant;
- (b) in addition to the evidence adduced by the parties appearing, may direct such other evidence to be given as the court considers necessary or proper; and
- (c) may accept such evidence as the court considers proper of the deceased's reasons, so far as ascertainable,
- (i) for making the dispositions made by his will, or
 - (ii) for not making adequate provision for a dependant,

including any statement in writing signed by the deceased. R.S.O. 1970, c. 126, s. 6, *amended*.

Idem

(2) In estimating the weight to be given to a statement referred to in clause *c* of subsection 1, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. *New*.

Conditions
and
restrictions

70.—(1) In any order making provision for support of a dependant, the court may impose such conditions and restrictions as the court considers appropriate.

(2) Provision may be made out of income or capital or both and an order may provide for one or more of the following, as the court considers appropriate, ^{Contents of order}

- (a) an amount payable annually or otherwise whether for an indefinite or limited period or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned to or in trust for the benefit of the dependant, whether absolutely, for life or for a term of years;
- (d) the possession or use of any specified property by the dependant for life or such period as the court considers appropriate;
- (e) a lump sum payment to supplement or replace periodic payments;
- (f) the securing of payment under an order by a charge on property or otherwise;
- (g) the payment of a lump sum or of increased periodic payments to enable a dependant spouse or child to meet debts reasonably incurred for his or her own support prior to an application under this Part;
- (h) that all or any of the moneys payable under the order be paid to an appropriate person or agency for the benefit of the dependant;
- (i) the payment to an agency referred to in subsection 2 of section 65 of any amount in reimbursement for an allowance or benefit granted in respect of the support of the dependant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order. R.S.O. 1970, c. 126, s. 2, *amended*.

(3) Where a transfer or assignment of property is ordered, ^{Idem} the court may,

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the court may direct;
or
- (b) grant a vesting order.

(4) An order under this section may be made notwithstanding any agreement or waiver to the contrary. ^{Agreement or waiver} *New*.

Notice to
parties
before order

(5) The court shall not make any order under this section until it is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing. R.S.O. 1970, c. 126, s. 5.

Exception

(6) Notwithstanding subsection 5, where, in the opinion of the court,

- (a) every reasonable effort has been made to serve those entitled to notice; or
- (b) after every reasonable effort has been made, it is not possible to identify one or more of the persons entitled to notice,

the court may dispense with the requirement of notice in respect of any person who has not been served. *New.*

Interim
order

71. Where an application is made under this Part and the applicant is in need of and entitled to support but any or all of the matters referred to in section 69 or 70 have not been ascertained by the court, the court may make such interim order under section 70 as it considers appropriate. 1973, c. 131, s. 1, *part*.

Inquiries
and further
orders

72. Where an order has been made under this Part, the court at any subsequent date may,

- (a) inquire whether the dependant benefited by the order has become entitled to the benefit of any other provision for his support;
- (b) inquire into the adequacy of the provision ordered; and
- (c) discharge, vary or suspend the order; or make such other order as the court considers appropriate in the circumstances. 1973, c. 131, s. 1, *part, amended*.

Further
powers of
court

73. The court may at any time,

- (a) fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;

- (b) relieve such portion of the estate from further liability; and
- (c) direct,
 - (i) the manner in which such periodic payment is to be secured, or
 - (ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable. *New.*

74.—(1) Where an application is made and notice thereof is served on the personal representative of the deceased, ^{Distribution stayed} he shall not, after service of the notice upon him, unless all persons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application. R.S.O. 1970, c. 126, s. 4 (3).

(2) Nothing in this Part prevents a personal representative ^{Exception} from making reasonable advances for support to dependants who are beneficiaries.

(3) Where a personal representative distributes any portion of the estate in violation of subsection 1, if any ^{Liability of personal representative} provision for support is ordered by the court to be made out of the estate, the personal representative is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Part, to be made out of the portion of the estate distributed. *New.*

75.—(1) Subject to subsection 2, the incidence of any ^{Incidence of provision ordered} provision for support ordered shall fall rateably upon that part of the deceased's estate to which the jurisdiction of the court extends.

(2) The court may order that the provision for support ^{Idem} be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to the court seems proper. *New.*

76. The court may give such further directions as it considers necessary for the purpose of giving effect to an order. ^{Further directions}
New.

Certified
copy of
order filed
with the
clerk of
the court

77.—(1) A certified copy of every order made under this Part shall be filed with the clerk of the court out of which the letters probate or letters of administration issued.

Idem

(2) A memorandum of the order shall be endorsed on or annexed to the copy, in the custody of the clerk, of the letters probate or letters of administration, as the case may be.
New.

Property
devised

78. Where a deceased,

- (a) has, in his lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath any property; and
- (b) has by his will devised or bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Part except to the extent that the value of the property in the opinion of the court exceeds the consideration therefor. R.S.O. 1970, c. 126, s. 8, *amended*.

Value of
certain
transactions
deemed part
of estate

79.—(1) Subject to section 78, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his net estate for purposes of ascertaining the value of his estate, and being available to be charged for payment by an order under clause *f* of subsection 2 of section 70,

- (a) gifts *mortis causa*;
- (b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;
- (c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of those

persons with any chartered bank, savings office, credit union or trust company, and remaining on deposit at the date of the death of the deceased;

- (d) any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants;
- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
- (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him; and
- (g) any amount payable under a designation of beneficiary under Part III.

(2) The capital value of the transactions referred to in clauses *b*, *c* and *d* of subsection 1 shall be deemed to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants was furnished by the deceased. Idem

(3) Dependants claiming under this Part shall have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased. Burden of proof

(4) Where the other party to a transaction described in clause *c* or *d* of subsection 1 is a dependant, he shall have the burden of establishing the amount of his contribution, if any. Idem

(5) This section does not prohibit any corporation or person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled Exception

thereto unless there has been personally served on the corporation or person a certified copy of a suspensory order made under section 66 enjoining such payment or transfer.

Suspensory
order

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of a suspensory order shall be a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period the order is in force.

Rights of
creditor

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights. *New.*

Validity of
mortgage,
etc.

80. Where provision for the support of a dependant is ordered under this Part, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid. *New.*

Persons in
institutions
under
R.S.O. 1970,
c. 269,
1974, c. 2

81.—(1) Where a person by whom, or on whose behalf, an application may be made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974* at the time of the deceased's death or at any time before the application under this Part is heard and disposed of, notice of the application for letters probate or letters of administration shall be served upon the Public Trustee on behalf of that person, and the time within which the Public Trustee may make an application under this Part runs from the date of the service of the notice.

Notice to
Public
Trustee

(2) Where a person interested in the estate in respect of which an application is made under this Part is a patient in a psychiatric facility under *The Mental Health Act* or a resident in a facility under *The Developmental Services Act, 1974*, notice of the application shall in every case be served upon the Public Trustee, who has the right to appear and be heard upon the application. R.S.O. 1970, c. 126, s. 4 (5, 6), *amended.*

Removal
into
Supreme
Court

82. At any time before the hearing of an application, a judge of the Supreme Court upon motion on behalf of the personal representative of the deceased, the applicant, or any other person interested, and upon being satisfied that the application is of such a nature and of such importance as to render it proper that it should be disposed of in the Supreme Court and the property of

the deceased exceeds \$20,000, may by order direct that the application be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court who has the like powers and shall proceed in the like manner as the court on an application under this Part. R.S.O. 1970, c. 126, s. 4 (4), *amended*.

83. The court may direct that the costs of the application ^{Costs} be paid out of the estate or otherwise as it thinks proper, and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any support applied for or directed by its order. R.S.O. 1970, c. 126, s. 11.

84. An appeal lies to the Supreme Court from any order ^{Appeal} of the court made under this Part. R.S.O. 1970, c. 126, s. 12 (1), *amended*.

85.—(1) An order or direction made under this Part may ^{Enforcement} be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

(2) Where a court orders security for the payment ^{Realization of security} under an order under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. R.S.O. 1970, c. 126, s. 12, *amended*.

86. This Part binds the Crown. *New.* ^{Crown bound}

87.—(1) Subject to subsection 2, *The Dependants' Relief* ^{Repeals} *Act*, being chapter 126 of the Revised Statutes of Ontario, 1970, and *The Dependants' Relief Amendment Act, 1973*, being chapter 131, are repealed.

(2) The enactments repealed by subsection 1 continue in ^{Exception} force as if unrepealed in respect of applications where the deceased died before the 31st day of March, 1978.

88. This Part does not apply where the deceased died ^{Application of Part} before the 31st day of March, 1978, but an application may be made under section 72 regardless of the time of the deceased's death.

PART VI

RIGHTS OF COMMON LAW SPOUSES
AND CHILDREN BORN OUTSIDE MARRIAGE

1971, c. 51,
s. 1 (1) (b, c),
re-enacted

89.—(1) Clauses *b* and *c* of subsection 1 of section 1 of *The Compensation for Victims of Crime Act, 1971*, being chapter 51, are repealed and the following substituted therefor:

R.S.O. 1970,
c. 64

(*b*) “child” means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a grandchild of the victim and a person whom the victim has demonstrated a settled intention to treat as a child of his family, and includes a child of the victim conceived before and born alive after the victim’s death, but does not include a child placed in the home of the victim as a foster child for consideration by a person having lawful custody;

(*c*) “dependant” means,

- (i) the spouse of the victim,
- (ii) a parent of the victim, including a grandparent and a person who has demonstrated a settled intention to treat the victim as a child of his family, but does not include a person in whose home the victim was placed as a foster child for consideration by a person having lawful custody,
- (iii) a child of the victim,
- (iv) a brother or sister of the victim, and
- (v) any other relative of the victim,

who was in whole or in part dependent on the victim for support at the time of his death.

1971,
c. 51, s. 1 (2),
re-enacted

(2) Subsection 2 of the said section 1 is repealed and the following substituted therefor:

Unmarried
spouses

(2) The Board may direct that a person was the spouse of a deceased victim for the purposes of this Act where the Board finds that,

(a) they were a man and a woman who, not being married to each other, had been cohabiting immediately before the death of the victim,

(i) continuously for a period of not less than five years, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents; or

(b) their marriage was terminated by a decree absolute of divorce or was declared a nullity and the spouse was a person to whom the victim was providing support or was under a legal obligation to provide support immediately before his death.

(3) Subject to section 6 of *The Compensation for Victims of Crime Act, 1971*, this section applies to applications whether the victim died before, on or after the 31st day of March, 1978. 1971, c. 51

90.—(1) Section 9 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection: R.S.O. 1970,
c. 343, s. 9,
amended

(2) For the purposes of subsection 1, “spouse” includes either of a man and a woman who, not being married to each other, had been cohabiting immediately before the death of one of them, “spouse”
defined

(a) continuously for a period of not less than five years; or

(b) in a relationship of some permanence where there is a child born of whom they are the natural parents.

(2) Section 17 of the said Act is amended by striking out “the unborn child or other” in the second and third lines and inserting in lieu thereof “any unborn”. R.S.O. 1970,
c. 343, s. 17,
amended

(3) Section 17 of the said Act is further amended by adding thereto the following subsection. R.S.O. 1970,
c. 343, s. 17,
amended

(2) For the purposes of subsection 1, “issue” means issue of a person, whether born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act*. “issue”
defined

R.S.O. 1970,
c. 64

GENERAL

Commence-
ment

91. This Act comes into force on the 31st day of March, 1978.

Short title

92. The short title of this Act is *The Succession Law Reform Act, 1977*.

An Act to reform the Law respecting
Succession to the Estates of Deceased
Persons

1st Reading

October 17th, 1977

2nd Reading

October 18th, 1977

3rd Reading

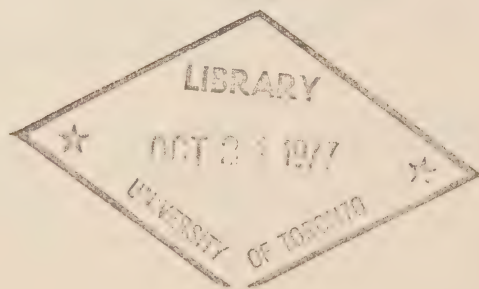
November 1st, 1977

THE HON. R. McMurtry
Attorney General

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the
Law respecting the Status of Children**

THE HON. R. McMURTRY
Attorney General



EXPLANATORY NOTES

PART I. The Bill would remove any distinction in law between legitimate and illegitimate children. A child would be a child of his natural parents regardless of their marital status.

PART II. This Part deals with the establishment of parentage. Maternity is generally ascertainable through the event of birth, registration and nurture. The existence of certain circumstances set out in section 8 would raise a presumption of paternity similar to the present presumption of legitimacy if born in wedlock. Also, similarly, the presumption can be rebutted where an issue arises turning on paternity.

PART III. The amendments eliminate specific references to legitimacy, illegitimacy or legitimation in other statutes and makes other complementary amendments.

BILL 61

1977

An Act to reform the Law respecting the Status of Children

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

EQUAL STATUS OF CHILDREN

1.—(1) Subject to subsection 2, for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage. Rule of parentage

(2) Where an adoption order has been made, section 83 or 85 of *The Child Welfare Act* applies and the child is the child of the adopting parents as if they were the natural parents. Exception for adopted children
R.S.O. 1970, c. 64

(3) The parent and child relationships as determined under subsections 1 and 2 shall be followed in the determination of other kindred relationships flowing therefrom. Kindred relationships

(4) Any distinction at common law between the status of children born in wedlock and born out of wedlock is abolished and the relationship of parent and child and kindred relationships flowing therefrom shall be determined for the purposes of the common law in accordance with this section. Common law distinction of legitimacy abolished

2.—(1) For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of Rule of construction

the relationship of parent and child as determined under section 1.

- Application (2) Subsection 1 applies to,
- (a) any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the day this Act comes into force; and
 - (b) any instrument made on or after the day this Act comes into force.

PART II

ESTABLISHMENT OF PARENTAGE

Court under ss. 4-7 **3.** The court having jurisdiction for the purposes of sections 4 to 7 shall be the Unified Family Court in the Judicial District of Hamilton-Wentworth and the Supreme Court in the other parts of Ontario.

Application for declaration **4.—(1)** Any person having an interest may apply to a court for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child.

Declaration of paternity recognized at law (2) Where the court finds that a presumption of paternity exists under section 8 and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law.

Declaration of maternity (3) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect.

Idem (4) Subject to sections 6 and 7, an order made under this section shall be recognized for all purposes.

Application for declaration of paternity where no presumption **5.—(1)** Where there is no person recognized in law under section 8 to be the father of a child, any person may apply to the court for a declaration that a male person is his or her father, or any male person may apply to the court for a declaration that a person is his child.

Limitation (2) An application shall not be made under subsection 1 unless both the persons whose relationship is sought to be established are living.

SECTION 4. Judicial procedure is provided for confirming paternity that is under a presumption or maternity. This may be taken by a third person having an interest, e.g., the personal representative in an estate, and whether or not the parent and child are living.

SECTION 5. Judicial procedure is provided for establishing paternity where there is no presumption, but only during the life of both father and child.

SECTIONS 6 AND 7. Review on new evidence and appeals are provided for.

SECTION 8. The presumptions of paternity are set out.

(3) Where the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect and, subject to sections 6 and 7, the order shall be recognized for all purposes. Declaratory order

6. Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or directions as are ancillary thereto. Reopening on new evidence

7. An appeal lies from an order under section 4 or 5 or a decision under section 6 in accordance with the rules of the court. Appeal

8.—(1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances: Recognition in law of parentage

1. The person is married to the mother of the child at the time of the birth of the child.
2. The person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree *nisi* was granted within 300 days before the birth of the child.
3. The person marries the mother of the child after the birth of the child and acknowledges that he is the natural father.
4. The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.
5. The person and the mother of the child have filed a statutory declaration under subsection 8 of section 6 of *The Vital Statistics Act* or a request under subsection 5 of section 6 of that Act, or either under a similar provision under the corresponding Act in another jurisdiction in Canada. R.S.O. 1970, c. 483
6. The person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

Where
marriage
void

(2) For the purpose of subsection 1, where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit.

Conflicting
presump-
tions

(3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection 1, no presumption shall be made as to paternity and no person is recognized in law to be the father.

Admissi-
bility in
evidence of
acknowledg-
ment against
interest

9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is *prima facie* proof of the fact.

Approved
blood tests

10.—(1) Upon the application of a party in a civil proceeding in which the court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests of such persons as are named in the order granting leave and to submit the results in evidence.

Conditions
attached

(2) Leave under subsection 1 may be given subject to such terms and conditions as the court thinks proper.

Inference
from refusal

(3) Where leave is given under subsection 1 and a person named therein refuses to submit to the blood test, the court may draw such inferences as it thinks appropriate.

Consent
where
incapacity

(4) Where a person named in an order granting leave under subsection 1 is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,

(a) where the person is a minor of the age of sixteen years or more, if the minor consents;

(b) where the person is a minor under the age of sixteen years, if the person having the charge of the minor consents; and

(c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Regulations
for blood
tests

11. The Lieutenant Governor in Council may make regulations governing blood tests for which leave is given

SECTION 9. Acknowledgments against interest are given recognition as evidence of parentage.

SECTIONS 10 AND 11. The use of blood tests as evidence of paternity is encouraged by regulating standards for testing, by facilitating medical consents in cases of persons without capacity and by permitting the court to attach evidentiary significance to a refusal.

SECTIONS 12, 13, 14, 15 and 16. Provision is made for acknowledgment of paternity by statutory declaration to be filed and available in the office of the Registrar General, with no special evidentiary value except when used in a court case against interest. Other documents clarifying paternity would also be collected and available.

by a court under section 10 including, without limiting the generality of the foregoing,

- (a) the method of taking blood samples and the handling, transportation and storage thereof;
- (b) the conditions under which a blood sample may be tested;
- (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 10;
- (d) prescribing procedures respecting the admission of reports of blood tests in evidence;
- (e) prescribing forms for the purpose of section 10 and this section and providing for their use.

12.—(1) Any person may file in the office of the Registrar General a statutory declaration, in the form prescribed by the regulations, affirming that he is the father of a child. Statutory declaration of paternity

(2) Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person having an interest may inspect any relevant statutory declaration filed under subsection 1 and obtain a certified copy thereof from the Registrar General. Inspection and copies under R.S.O. 1970, c. 483

13. Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person who has an interest, furnishes substantially accurate particulars and satisfies the Registrar General as to his reason for requiring it may inspect any statutory declaration filed under subsection 8 of section 6 of *The Vital Statistics Act* or any request filed under subsection 5 of section 6 of that Act and obtain a certified copy thereof from the Registrar General. Inspection of filings under R.S.O. 1970, c. 483, s. 6 (5, 8)

14.—(1) The registrar or clerk of every court in Ontario shall furnish the Registrar General with a statement in the form prescribed by the regulations respecting each order or judgment of the court that makes a finding of parentage or that is based upon a recognition of parentage. Filing of court decisions respecting parentage

(2) Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person may inspect an order or judgment filed under subsection 1 and obtain a certified copy thereof from the Registrar General. Inspection by public

Certified
copies as
evidence

15. A certificate certifying a copy of a document to be a true copy, obtained under section 12, 13 or 14, purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the Registrar General or Deputy Registrar General, receivable in evidence as *prima facie* proof of the filing and contents of the document for all purposes in any action or proceeding.

Duties of
Registrar
General

16. Nothing in this Act shall be construed to require the Registrar General to amend a registration showing parentage other than in recognition of an order made under section 4, 5 or 6.

Regulations
for forms

17. The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Part.

PART III

COMPLEMENTARY AMENDMENTS

R.S.O. 1970,
c. 222, s. 16 (1),
amended

18.—(1) Subsection 1 of section 16 of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by inserting after “father” in the third line “if known”.

s. 16 (2),
amended

(2) Subsection 2 of the said section 16 is amended by inserting after “no” in the first line “known”.

R.S.O. 1970,
c. 242,
repealed

19. *The Legitimacy Act*, being chapter 242 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 343, s. 7 (4),
amended

20. Subsection 4 of section 7 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimation” in the second line.

R.S.O. 1970,
c. 396, s. 30,
amended

21. Section 30 of *The Quieting Titles Act*, being chapter 396 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate” in the second line.

R.S.O. 1970,
c. 449,
s. 1 (d) (1),
amended

22.—(1) Subclause i of clause d of section 1 of *The Succession Duty Act*, being chapter 449 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate”.

s. 1 (d) (iv),
amended

(2) Subclause iv of clause d of the said section 1 is amended by striking out “legitimate” in the first line.

s. 7 (11) (c) (i),
amended

(3) Subclause i of clause c of subsection 11 of section 7 of the said Act, as re-enacted by the Statutes of Ontario,

SECTION 17. Prescribing forms by regulation is provided for.

SECTION 18. The provisions amended are concerned with the consent of a father on appointment of a guardian. The amendments recognize that the father, as determined under this Act, may not be known.

SECTIONS 19 TO 24. The amendments eliminate references to legitimate and illegitimate children.

1973, chapter 109, section 2, is amended by striking out "legitimate".

23.—(1) Subsection 2 of section 6 of *The Vital Statistics Act*, being chapter 483 of the Revised Statutes of Ontario, 1970, is amended by striking out "an illegitimate child" in the first and second lines and inserting in lieu thereof "a child born outside marriage". R.S.O. 1970,
c. 483, s. 6 (2),
amended

(2) Section 12 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is further amended by striking out "a child has been legitimated by the subsequent intermarriage of his parents" in the first and second lines and inserting in lieu thereof "after the birth of a child his parents intermarry", and by striking out "as to the legitimation" in the thirteenth line. s. 12,
amended

(3) Subsection 2 of section 41 of the said Act is repealed. s. 41 (2),
repealed

24. Clause *r* of subsection 1 of section 1 of *The Workmen's Compensation Act*, being chapter 505 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 173, section 1, is further amended by striking out "and, where the employee is the parent or grandparent of an illegitimate child, includes such child and, where the employee is an illegitimate child, includes his parents and grandparents" in the eighth, ninth, tenth and eleventh lines and in the amendment of 1973. R.S.O. 1970,
c. 505,
s. 1 (1) (r),
amended

25. This Act comes into force on the 31st day of March, 1978. Commence-
ment

26. The short title of this Act is *The Children's Law Reform Act*, 1977. Short title

An Act to reform the
Law respecting the Status of Children

1st Reading

October 17th, 1977

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

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Ontario. Legislative Assembly

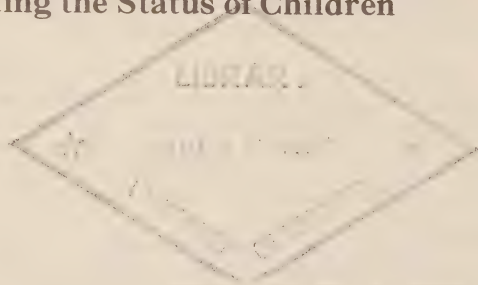
Government
Publications

BILL 61

Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the
Law respecting the Status of Children**



THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Committee of the Whole House)

TORONTO

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EXPLANATORY NOTES

PART I. The Bill would remove any distinction in law between legitimate and illegitimate children. A child would be a child of his natural parents regardless of their marital status.

PART II. This Part deals with the establishment of parentage. Maternity is generally ascertainable through the event of birth, registration and nurture. The existence of certain circumstances set out in section 8 would raise a presumption of paternity similar to the present presumption of legitimacy if born in wedlock. Also, similarly, the presumption can be rebutted where an issue arises turning on paternity.

PART III. The amendments eliminate specific references to legitimacy, illegitimacy or legitimation in other statutes and makes other complementary amendments.

BILL 61

1977

An Act to reform the Law respecting the Status of Children

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

EQUAL STATUS OF CHILDREN

1.—(1) Subject to subsection 2, for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage. Rule of parentage

(2) Where an adoption order has been made, section 83 or 85 of *The Child Welfare Act* applies and the child is the child of the adopting parents as if they were the natural parents. Exception for adopted children
R.S.O. 1970, c. 64

(3) The parent and child relationships as determined under subsections 1 and 2 shall be followed in the determination of other kindred relationships flowing therefrom. Kindred relationships

(4) Any distinction at common law between the status of children born in wedlock and born out of wedlock is abolished and the relationship of parent and child and kindred relationships flowing therefrom shall be determined for the purposes of the common law in accordance with this section. Common law distinction of legitimacy abolished

2.—(1) For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of Rule of construction

the relationship of parent and child as determined under section 1.

Application (2) Subsection 1 applies to,

- (a) any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the day this Act comes into force; and
- (b) any instrument made on or after the day this Act comes into force.

PART II

ESTABLISHMENT OF PARENTAGE

Court under
ss. 4-7

3. The court having jurisdiction for the purposes of sections 4 to 7 shall be the Unified Family Court in the Judicial District of Hamilton-Wentworth and the Supreme Court in the other parts of Ontario.

Application
for
declaration

4.—(1) Any person having an interest may apply to a court for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child.

Declaration
of paternity
recognized
at law

(2) Where the court finds that a presumption of paternity exists under section 8 and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law.

Declaration
of
maternity

(3) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect.

Idem

(4) Subject to sections 6 and 7, an order made under this section shall be recognized for all purposes.

Application
for
declaration of
paternity
where no
presumption

5.—(1) Where there is no person recognized in law under section 8 to be the father of a child, any person may apply to the court for a declaration that a male person is his or her father, or any male person may apply to the court for a declaration that a person is his child.

Limitation

(2) An application shall not be made under subsection 1 unless both the persons whose relationship is sought to be established are living.

SECTION 4. Judicial procedure is provided for confirming paternity that is under a presumption or maternity. This may be taken by a third person having an interest, e.g., the personal representative in an estate, and whether or not the parent and child are living.

SECTION 5. Judicial procedure is provided for establishing paternity where there is no presumption, but only during the life of both father and child.

SECTIONS 6 AND 7. Review on new evidence and appeals are provided for.

SECTION 8. The presumptions of paternity are set out.

(3) Where the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect and, subject to sections 6 and 7, the order shall be recognized for all purposes. Declaratory order

6. Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or directions as are ancillary thereto. Reopening on new evidence

7. An appeal lies from an order under section 4 or 5 or a decision under section 6 in accordance with the rules of the court. Appeal

8.—(1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances: Recognition in law of parentage

1. The person is married to the mother of the child at the time of the birth of the child.
2. The person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree *nisi* was granted within 300 days before the birth of the child.
3. The person marries the mother of the child after the birth of the child and acknowledges that he is the natural father.
4. The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.
5. The person and the mother of the child have filed a statutory declaration under subsection 8 of section 6 of *The Vital Statistics Act* or a request under subsection 5 of section 6 of that Act, or either under a similar provision under the corresponding Act in another jurisdiction in Canada. R.S.O. 1970, c. 483
6. The person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

Where
marriage
void

(2) For the purpose of subsection 1, where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit.

Conflicting
presump-
tions

(3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection 1, no presumption shall be made as to paternity and no person is recognized in law to be the father.

Admissi-
bility in
evidence of
acknowledg-
ment against
interest

9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is *prima facie* proof of the fact.

Approved
blood tests

10.—(1) Upon the application of a party in a civil proceeding in which the court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests of such persons as are named in the order granting leave and to submit the results in evidence.

Conditions
attached

(2) Leave under subsection 1 may be given subject to such terms and conditions as the court thinks proper.

Inference
from refusal

(3) Where leave is given under subsection 1 and a person named therein refuses to submit to the blood test, the court may draw such inferences as it thinks appropriate.

Consent
where
incapacity

(4) Where a person named in an order granting leave under subsection 1 is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,

- (a) where the person is a minor of the age of sixteen years or more, if the minor consents;
- (b) where the person is a minor under the age of sixteen years, if the person having the charge of the minor consents; and
- (c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Regulations
for blood
tests

11. The Lieutenant Governor in Council may make regulations governing blood tests for which leave is given

SECTION 9. Acknowledgments against interest are given recognition as evidence of parentage.

SECTIONS 10 AND 11. The use of blood tests as evidence of paternity is encouraged by regulating standards for testing, by facilitating medical consents in cases of persons without capacity and by permitting the court to attach evidentiary significance to a refusal.

SECTIONS 12, 13, 14, 15 and 16. Provision is made for acknowledgment of paternity by statutory declaration to be filed and available in the office of the Registrar General, with no special evidentiary value except when used in a court case against interest. Other documents clarifying paternity would also be collected and available.

by a court under section 10 including, without limiting the generality of the foregoing,

- (a) the method of taking blood samples and the handling, transportation and storage thereof;
- (b) the conditions under which a blood sample may be tested;
- (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 10;
- (d) prescribing procedures respecting the admission of reports of blood tests in evidence;
- (e) prescribing forms for the purpose of section 10 and this section and providing for their use.

12.—(1) Any person may file in the office of the Registrar Statutory declaration of paternity
General a statutory declaration, in the form prescribed by the regulations, affirming that he is the father of a child.

(2) Upon application and upon payment of the fee Inspection of filings and copies
prescribed under *The Vital Statistics Act*, any person having an interest may inspect any relevant statutory declaration filed under subsection 1 and obtain a certified copy thereof from the Registrar General. R.S.O. 1970, c. 483

13. Upon application and upon payment of the fee pre- Inspection of filings under
scribed under *The Vital Statistics Act*, any person who has an interest, furnishes substantially accurate particulars and satisfies the Registrar General as to his reason for requiring it may inspect any statutory declaration filed under subsection 8 of section 6 of *The Vital Statistics Act* or any request filed under subsection 5 of section 6 of that Act and obtain a certified copy thereof from the Registrar General. R.S.O. 1970, c. 483, s. 6 (5, 8)

14.—(1) The registrar or clerk of every court in Ontario Filing of court decisions respecting parentage
shall furnish the Registrar General with a statement in the form prescribed by the regulations respecting each order or judgment of the court that confirms or makes a finding of parentage.

(2) Upon application and upon payment of the fee Inspection by public
prescribed under *The Vital Statistics Act*, any person may inspect an order or judgment filed under subsection 1 and obtain a certified copy thereof from the Registrar General.

Certified
copies as
evidence

15. A certificate certifying a copy of a document to be a true copy, obtained under section 12, 13 or 14, purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the Registrar General or Deputy Registrar General, receivable in evidence as *prima facie* proof of the filing and contents of the document for all purposes in any action or proceeding.

Duties of
Registrar
General

16. Nothing in this Act shall be construed to require the Registrar General to amend a registration showing parentage other than in recognition of an order made under section 4, 5 or 6.

Regulations
for forms

17. The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Part.

PART III

COMPLEMENTARY AMENDMENTS

R.S.O. 1970,
c. 222, s. 16 (1),
amended

18.—(1) Subsection 1 of section 16 of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by inserting after “father” in the third line “if known”.

s. 16 (2),
amended

(2) Subsection 2 of the said section 16 is amended by inserting after “no” in the first line “known”.

R.S.O. 1970,
c. 242,
repealed

19. *The Legitimacy Act*, being chapter 242 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 343, s. 7 (4),
amended

20. Subsection 4 of section 7 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimation” in the second line.

R.S.O. 1970,
c. 396, s. 30,
amended

21. Section 30 of *The Quieting Titles Act*, being chapter 396 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate” in the second line.

R.S.O. 1970,
c. 449,
s. 1 (d) (i),
amended

22.—(1) Subclause i of clause d of section 1 of *The Succession Duty Act*, being chapter 449 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate”.

s. 1 (d) (iv),
amended

(2) Subclause iv of clause d of the said section 1 is amended by striking out “legitimate” in the first line.

s. 7 (11) (c) (i),
amended

(3) Subclause i of clause c of subsection 11 of section 7 of the said Act, as re-enacted by the Statutes of Ontario,

SECTION 17. Prescribing forms by regulation is provided for.

SECTION 18. The provisions amended are concerned with the consent of a father on appointment of a guardian. The amendments recognize that the father, as determined under this Act, may not be known.

SECTIONS 19 TO 24. The amendments eliminate references to legitimate and illegitimate children.

1973, chapter 109, section 2, is amended by striking out “legitimate”.

23.—(1) Subsection 2 of section 6 of *The Vital Statistics Act*, being chapter 483 of the Revised Statutes of Ontario, 1970, is amended by striking out “an illegitimate child” in the first and second lines and inserting in lieu thereof “a child born outside marriage”. R.S.O. 1970, c. 483, s. 6 (2), amended

(2) Section 12 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is further amended by striking out “a child has been legitimated by the subsequent intermarriage of his parents” in the first and second lines and inserting in lieu thereof “after the birth of a child his parents intermarry”, and by striking out “as to the legitimation” in the thirteenth line. s. 12, amended

(3) Subsection 2 of section 41 of the said Act is repealed. s. 41 (2), repealed

24. Clause *r* of subsection 1 of section 1 of *The Workmen's Compensation Act*, being chapter 505 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 173, section 1, is further amended by striking out “and, where the employee is the parent or grandparent of an illegitimate child, includes such child and, where the employee is an illegitimate child, includes his parents and grandparents” in the eighth, ninth, tenth and eleventh lines and in the amendment of 1973. R.S.O. 1970, c. 505, s. 1 (1) (r), amended

25. This Act comes into force on the 31st day of March, 1978. Commencement

26. The short title of this Act is *The Children's Law Reform Act*, 1977. Short title

An Act to reform the
Law respecting the Status of Children

1st Reading

October 17th, 1977

2nd Reading

October 18th, 1977

3rd Reading

THE HON. R. McMURTRY
Attorney General

*(Reprinted as amended by the
Committee of the Whole House)*

BILL 61

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act to reform the
Law respecting the Status of Children**

THE HON. R. MCMURTRY
Attorney General



BILL 61

1977

An Act to reform the Law respecting the Status of Children

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

EQUAL STATUS OF CHILDREN

1.—(1) Subject to subsection 2, for all purposes of the law of Ontario a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside marriage. Rule of parentage

(2) Where an adoption order has been made, section 83 or 85 of *The Child Welfare Act* applies and the child is the child of the adopting parents as if they were the natural parents. Exception for adopted children
R.S.O. 1970, c. 64

(3) The parent and child relationships as determined under subsections 1 and 2 shall be followed in the determination of other kindred relationships flowing therefrom. Kindred relationships

(4) Any distinction at common law between the status of children born in wedlock and born out of wedlock is abolished and the relationship of parent and child and kindred relationships flowing therefrom shall be determined for the purposes of the common law in accordance with this section. Common law distinction of legitimacy abolished

2.—(1) For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of Rule of construction

the relationship of parent and child as determined under section 1.

- Application** (2) Subsection 1 applies to,
- (a) any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the day this Act comes into force; and
 - (b) any instrument made on or after the day this Act comes into force.

PART II

ESTABLISHMENT OF PARENTAGE

Court under ss. 4-7 **3.** The court having jurisdiction for the purposes of sections 4 to 7 shall be the Unified Family Court in the Judicial District of Hamilton-Wentworth and the Supreme Court in the other parts of Ontario.

Application for declaration **4.—**(1) Any person having an interest may apply to a court for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child.

Declaration of paternity recognized at law (2) Where the court finds that a presumption of paternity exists under section 8 and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognized in law.

Declaration of maternity (3) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect.

Idem (4) Subject to sections 6 and 7, an order made under this section shall be recognized for all purposes.

Application for declaration of paternity where no presumption **5.—**(1) Where there is no person recognized in law under section 8 to be the father of a child, any person may apply to the court for a declaration that a male person is his or her father, or any male person may apply to the court for a declaration that a person is his child.

Limitation (2) An application shall not be made under subsection 1 unless both the persons whose relationship is sought to be established are living.

(3) Where the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect and, subject to sections 6 and 7, the order shall be recognized for all purposes.

6. Where a declaration has been made under section 4 or 5 and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or directions as are ancillary thereto.

7. An appeal lies from an order under section 4 or 5 or a decision under section 6 in accordance with the rules of the court.

8.—(1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances:

1. The person is married to the mother of the child at the time of the birth of the child.
2. The person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree *nisi* was granted within 300 days before the birth of the child.
3. The person marries the mother of the child after the birth of the child and acknowledges that he is the natural father.
4. The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.
5. The person and the mother of the child have filed a statutory declaration under subsection 8 of section 6 of *The Vital Statistics Act* or a request under subsection 5 of section 6 of that Act, or either under a similar provision under the corresponding Act in another jurisdiction in Canada.
6. The person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

R.S.O. 1970,
c. 483

Where
marriage
void

(2) For the purpose of subsection 1, where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit.

Conflicting
presump-
tions

(3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection 1, no presumption shall be made as to paternity and no person is recognized in law to be the father.

Admissi-
bility in
evidence of
acknowledg-
ment against
interest

9. A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is *prima facie* proof of the fact.

Approved
blood tests

10.—(1) Upon the application of a party in a civil proceeding in which the court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests of such persons as are named in the order granting leave and to submit the results in evidence.

Conditions
attached

(2) Leave under subsection 1 may be given subject to such terms and conditions as the court thinks proper.

Inference
from refusal

(3) Where leave is given under subsection 1 and a person named therein refuses to submit to the blood test, the court may draw such inferences as it thinks appropriate.

Consent
where
incapacity

(4) Where a person named in an order granting leave under subsection 1 is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,

- (a) where the person is a minor of the age of sixteen years or more, if the minor consents;
- (b) where the person is a minor under the age of sixteen years, if the person having the charge of the minor consents; and
- (c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Regulations
for blood
tests

11. The Lieutenant Governor in Council may make regulations governing blood tests for which leave is given

by a court under section 10 including, without limiting the generality of the foregoing,

- (a) the method of taking blood samples and the handling, transportation and storage thereof;
- (b) the conditions under which a blood sample may be tested;
- (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 10;
- (d) prescribing procedures respecting the admission of reports of blood tests in evidence;
- (e) prescribing forms for the purpose of section 10 and this section and providing for their use.

12.—(1) Any person may file in the office of the Registrar General a statutory declaration, in the form prescribed by the regulations, affirming that he is the father of a child. Statutory declaration of paternity

(2) Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person having an interest may inspect any relevant statutory declaration filed under subsection 1 and obtain a certified copy thereof from the Registrar General. Inspection and copies R.S.O. 1970, c. 483

13. Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person who has an interest, furnishes substantially accurate particulars and satisfies the Registrar General as to his reason for requiring it may inspect any statutory declaration filed under subsection 8 of section 6 of *The Vital Statistics Act* or any request filed under subsection 5 of section 6 of that Act and obtain a certified copy thereof from the Registrar General. Inspection of filings under R.S.O. 1970, c. 483, s. 6 (5, 8)

14.—(1) The registrar or clerk of every court in Ontario shall furnish the Registrar General with a statement in the form prescribed by the regulations respecting each order or judgment of the court that confirms or makes a finding of parentage. Filing of court decisions respecting parentage

(2) Upon application and upon payment of the fee prescribed under *The Vital Statistics Act*, any person may inspect an order or judgment filed under subsection 1 and obtain a certified copy thereof from the Registrar General. Inspection by public

Certified
copies as
evidence

15. A certificate certifying a copy of a document to be a true copy, obtained under section 12, 13 or 14, purporting to be signed by the Registrar General or Deputy Registrar General or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the Registrar General or Deputy Registrar General, receivable in evidence as *prima facie* proof of the filing and contents of the document for all purposes in any action or proceeding.

Duties of
Registrar
General

16. Nothing in this Act shall be construed to require the Registrar General to amend a registration showing parentage other than in recognition of an order made under section 4, 5 or 6.

Regulations
for forms

17. The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Part.

PART III

COMPLEMENTARY AMENDMENTS

R.S.O. 1970,
c. 222, s. 16 (1),
amended

18.—(1) Subsection 1 of section 16 of *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by inserting after “father” in the third line “if known”.

s. 16 (2),
amended

(2) Subsection 2 of the said section 16 is amended by inserting after “no” in the first line “known”.

R.S.O. 1970,
c. 242,
repealed

19. *The Legitimacy Act*, being chapter 242 of the Revised Statutes of Ontario, 1970, is repealed.

R.S.O. 1970,
c. 343, s. 7 (4),
amended

20. Subsection 4 of section 7 of *The Perpetuities Act*, being chapter 343 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimation” in the second line.

R.S.O. 1970,
c. 396, s. 30,
amended

21. Section 30 of *The Quieting Titles Act*, being chapter 396 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate” in the second line.

R.S.O. 1970,
c. 449,
s. 1 (d) (i),
amended

22.—(1) Subclause i of clause *d* of section 1 of *The Succession Duty Act*, being chapter 449 of the Revised Statutes of Ontario, 1970, is amended by striking out “legitimate”.

s. 1 (d) (iv),
amended

(2) Subclause iv of clause *d* of the said section 1 is amended by striking out “legitimate” in the first line.

s. 7 (11) (c) (i),
amended

(3) Subclause i of clause *c* of subsection 11 of section 7 of the said Act, as re-enacted by the Statutes of Ontario,

1973, chapter 109, section 2, is amended by striking out "legitimate".

23.—(1) Subsection 2 of section 6 of *The Vital Statistics Act*, being chapter 483 of the Revised Statutes of Ontario, 1970, is amended by striking out "an illegitimate child" in the first and second lines and inserting in lieu thereof "a child born outside marriage". R.S.O. 1970,
c. 483, s. 6 (2),
amended

(2) Subsection 1 of section 12 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is further amended by striking out "a child has been legitimated by the subsequent intermarriage of his parents" in the first and second lines and inserting in lieu thereof "after the birth of a child his parents intermarry", and by striking out "as to the legitimation" in the thirteenth line. s. 12,
amended

(3) Subsection 2 of section 41 of the said Act is repealed. s. 41 (2),
repealed

24. Clause *r* of subsection 1 of section 1 of *The Workmen's Compensation Act*, being chapter 505 of the Revised Statutes of Ontario, 1970, as amended by the Statutes of Ontario, 1973, chapter 173, section 1, is further amended by striking out "and, where the employee is the parent or grandparent of an illegitimate child, includes such child and, where the employee is an illegitimate child, includes his parents and grandparents" in the eighth, ninth, tenth and eleventh lines and in the amendment of 1973. R.S.O. 1970,
c. 505,
s. 1 (1) (r).
amended

25. This Act comes into force on the 31st day of March, 1978. Commence-
ment

26. The short title of this Act is *The Children's Law Reform Act*, 1977. Short title

An Act to reform the
Law respecting the Status of Children

1st Reading

October 17th, 1977

2nd Reading

October 18th, 1977

3rd Reading

November 1st, 1977

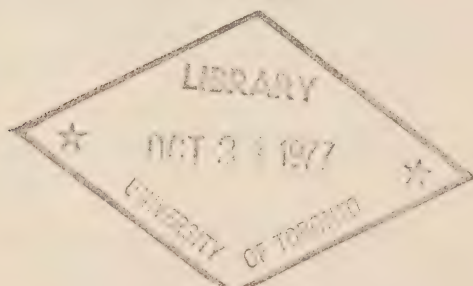
THE HON. R. McMurtry
Attorney General

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1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

An Act to revise The Marriage Act

THE HON. R. McMURTRY
Attorney General



TORONTO

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EXPLANATORY NOTE

The Bill revises *The Marriage Act* for the purpose of implementing some of the recommendations of the Ontario Law Reform Commission made in Part II of its Report on Family Law (Marriage) and also to implement certain administrative improvements.

The principal changes are:

1. The Act only applies to the first marriage ceremony and permits additional ceremonies by the same couple. (s. 1 (2)).
2. The requirement of fifteen days residence is deleted.
3. The minimum age for marriage is 18 years or 16 years with consent of the parents. (s. 5).
4. The duty of performing civil marriages now performed by provincial judges and county and district court judges is extended to justices of the peace and other designated persons. (s. 24).
5. The action for breach of promise of marriage is abolished. (s. 32)
6. The question of fault is removed from consideration of the question of entitlement to gifts made in contemplation of or conditional upon marriage. (s. 33)
7. The procedural forms and prescribing of fees are moved from the Act to be provided by regulations.

BILL 62

1977

An Act to revise The Marriage Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “band” means a band as defined in the *Indian Act* (Canada); R.S.C. 1970,
c. I-6
- (b) “church” includes chapel, meeting-house or place set aside for religious worship;
- (c) “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);
- (d) “issuer” means a person authorized under this Act to issue marriage licences;
- (e) “judge” means a provincial judge or a judge of a county or district court;
- (f) “licence” means a marriage licence issued under this Act;
- (g) “Minister” means the Minister of Consumer and Commercial Relations;
- (h) “prescribed” means prescribed by the regulations;
- (i) “regulations” means the regulations made under this Act;
- (j) “reserve” means a reserve as defined in the *Indian Act* (Canada). R.S.O. 1970, c. 261, s. 1; 1972, c. 1, s. 44 (1-3), *amended*.

Application
of Act to
subsequent
ceremonies

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized in accordance with this Act or recognized as valid in Ontario.
New.

Administra-
tion

2. The administration of this Act is under the direction of the Minister.

Delegation
of powers
and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial Relations, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1972, c. 1, s. 44 (3), *amended*.

Authority
to marry

4. No marriage may be solemnized except under the authority of a licence issued in accordance with this Act or the publication of banns. R.S.O. 1970, c. 261, s. 4 (1), *amended*.

Who may
marry

5.—(1) Any person who is of the age of majority may obtain a licence or be married under authority of publication of banns, provided no lawful cause exists to hinder the solemnization. R.S.O. 1970, c. 261, s. 5 (1), *amended*.

Idem

(2) No person shall issue a licence to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

Giving of
consent

(3) The consent referred to in subsection 2 is not required in respect of a person who is a widow, widower or divorced.

Idem

(4) Where one of the parents of a minor is dead or both parents are living apart, the consent required by subsection 2 may be given by the parent having actual or legal custody of the minor.

Idem

1974, c. 2

(5) Where both parents of a minor are dead or are voluntary or involuntary patients in a psychiatric facility, or are residents of a facility under *The Developmental Services Act, 1974*, the consent required by subsection 2 may be given by a lawfully appointed guardian or an acknowledged guardian who has brought up or who for the three years immediately preceding the intended marriage has supported the minor.

(6) Where a minor is made a ward of someone other than ^{Idem} a parent by order of a court or under any Act, the consent required by subsection 2 may be given by the lawful guardian of the minor or person responsible for exercising the rights and duties of a guardian of the minor. R.S.O. 1970, c. 261, ss. 7, 8, *amended*.

6.—(1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily with- ^{Application to dispense with consent} holds his consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a next friend for an order dispensing with the consent.

(2) The judge shall hear the application in a summary ^{Powers of judge} manner and may, in his discretion, make an order dispensing with the consent required by section 5. R.S.O. 1970, c. 261, s. 9, *amended*.

7. No person shall issue a licence to or solemnize the marriage of any person whom he knows or has reasonable grounds to believe is mentally ill or mentally defective or under the influence of intoxicating liquor or drugs. ^{Persons mentally ill or under influence} R.S.O. 1970, c. 261, s. 6, *amended*.

8.—(1) An applicant for a licence who has been previously ^{Where dissolution of former marriage recognized in Ontario} married is entitled to be issued a licence if such marriage has been dissolved or annulled and such dissolution or annulment is recognized under the law of Ontario and the applicant otherwise complies with the requirements of this Act.

(2) Subject to subsection 6, no issuer shall issue a licence ^{Material to be filed with issuer where dissolution in Canada} to a person whose previous marriage has been dissolved or annulled in Canada unless such person deposits with the issuer,

(a) the final decree or judgment dissolving or annulling the marriage or a copy of the final decree or judgment or Act dissolving or annulling the marriage, certified by the proper officer; and

(b) such other material as the issuer may require.

(3) Subject to subsection 6, no issuer shall issue a licence ^{Where dissolution, etc., outside Canada} to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada, unless the authorization in writing of the Minister is obtained upon the deposit of such material as he may require.

Review of
refusal to
issue
licence

1971, c. 48

(4) Where an issuer refuses to issue a licence, or the Minister refuses to issue an authorization under subsection 3, the applicant may apply to the Supreme Court for judicial review under *The Judicial Review Procedure Act, 1971* and for an order directing that a licence be issued to him and if the court finds that he is so entitled it may make such an order.

Parties

(5) The applicant, the Minister and such other persons as the court may order are parties to an application under subsection 4.

Issue of
licence
under court
order

(6) Where an applicant for a licence files with an issuer, together with his application, an order of the Supreme Court made on an application under subsection 4 directing that a licence be issued to him, the issuer shall issue the licence. 1971, c. 50, s. 55 (1).

Application
for presump-
tion of death

9.—(1) A married person whose spouse is missing and who alleges,

- (a) that his spouse has been continuously absent for at least seven years immediately preceding the application;
- (b) that his spouse has not been heard from or heard of during such period by the applicant or to the knowledge of the applicant by any other person; and
- (c) that the applicant has made reasonable inquiries and has no reason to believe that his spouse is living,

may apply to the judge of a county or district court for an order under this section.

Order

(2) Upon being satisfied as to the truth of the matters alleged, the judge may, in his discretion, make an order declaring that the spouse shall be presumed dead. R.S.O. 1970, c. 261, s. 11 (1, 2).

Remarriage
authorized

(3) Where an order has been obtained under this section, the person in whose favour the order was made may, subject to the provisions of this Act, obtain a licence or be married under the authority of publication of banns upon depositing a copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the prescribed form.

(4) The order has no effect for any purpose other than the issuance of a licence under subsection 3. R.S.O. 1970, c. 261, s. 11 (3, 4), *amended*. Effect of order

10. Notwithstanding anything in this Act, if the Minister considers that circumstances justify the issue of a licence in any particular case, he may, in his absolute discretion, authorize the issue of the licence. R.S.O. 1970, c. 261, s. 10, *amended*. Discretionary power of Minister

11.—(1) Marriage licences may be issued by the clerk of every city, town and village. Issuers

(2) Where it is considered expedient for the public convenience, the Lieutenant Governor in Council may appoint as an issuer the clerk of any township, or any person resident in a county, or in a township adjacent thereto, or in a provisional judicial district, or a member of a band upon the recommendation of the council of the band. R.S.O. 1970, c. 261, s. 30, *amended*. In townships and unorganized territory

(3) An issuer may, with the approval in writing of the Minister or of the head of the council of the municipality of which he is clerk, appoint in writing one or more deputies to act for him, and any such deputy while so acting has the power of the issuer appointing him. Deputy issuers

(4) The issuer shall, upon appointing a deputy, forthwith transmit to the Minister a notice of the appointment, and of the name and official position of the person by whom the appointment has been approved, and the Minister may at any time cancel the appointment. Notice of appointment of deputy

(5) The deputy shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner: Signature of licences by deputy

AB, Issuer of Marriage Licences, per CD, Deputy Issuer.

R.S.O. 1970, c. 261, s. 31.

12.—(1) An issuer or the Minister may require evidence to identify any applicant or to establish his status and may examine, under oath if required, any applicant or other person as to any matter pertaining to the issue of a licence. R.S.O. 1970, c. 261, s. 33, *amended*. Evidence on applications

(2) Where an issuer has reason to believe that any information set out in an application for a licence is untrue, he shall not issue the licence unless, on the production of such further evidence as he may require, he is satisfied as to the truth of the information. R.S.O. 1970, c. 261, s. 35, *amended*. Untrue information

Record of
licences

13.—(1) Every issuer shall keep in his office a record of the serial number and the date of issue of every licence issued by him, and the names and addresses of the parties to the intended marriage.

Searches

(2) Any person is entitled, upon application, to have a search made respecting any licence issued within three months immediately preceding the date of application. R.S.O. 1970, c. 261, s. 34.

Material to be
forwarded to
Registrar
General

14. Every issuer immediately upon issuing a licence and every person registered as authorized to solemnize marriage upon publishing banns shall forward to the Registrar General,

(a) any consent under section 5;

(b) any judge's order under section 6;

(c) any affidavit or judge's order under section 9;

(d) any documentary or other material filed on the application for a licence under section 8;

(e) any affidavit as to age;

(f) any documentary material obtained under section 12.
R.S.O. 1970, c. 261, s. 36, *amended*.

Oaths

15. Issuers may administer oaths for the purposes of this Act. R.S.O. 1970, c. 261, s. 37.

Indians

16. Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario no fee shall be charged for the licence. R.S.O. 1970, c. 261, s. 39, *amended*.

Publication
of banns

17.—(1) Where a marriage is to be solemnized under the authority of publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

(a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or

(b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

Method and
time of
publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(3) Where the usage of any denomination, faith or creed ^{Exception} substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(4) The person or persons who publish banns shall certify ^{Proof} proof thereof in the prescribed form. R.S.O. 1970, c. 261, s. 15, *amended*.

18. Banns shall not be published where either of the ^{Where banns not to be published} parties to the intended marriage has been married and the marriage has been dissolved or annulled. R.S.O. 1970, c. 261, s. 18, *amended*.

19. Form 1 respecting the prohibited degrees of affinity ^{Prohibited degrees to be endorsed} and consanguinity shall be endorsed on the licence and on the proof of publication of banns. R.S.O. 1970, c. 261, s. 45 (1), *amended*.

20.—(1) No person shall solemnize a marriage unless he ^{Who may solemnize marriage} is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage.

(2) Upon application the Minister may, subject to subsec- ^{Application for registration} tion 3, register any person as a person authorized to solemnize marriage.

(3) No person shall be registered unless it appears to the ^{Who may be registered} Minister,

- (a) that the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs, or is, by the rules of that religious body, deemed ordained or appointed;
- (b) that the person is duly recognized by the religious body to which he belongs as entitled to solemnize marriage according to its rites and usages;
- (c) that the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and
- (d) that the person is resident in Ontario or has his parish or pastoral charge in whole or in part in Ontario; provided that in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register him as authorized to solemnize marriage during a period to be fixed by the Minister.

Where no person authorized to solemnize marriage	(4) Notwithstanding subsection 1, where it appears to the Minister that the doctrines of a religious body described in clause <i>c</i> of subsection 3 do not recognize any person as authorized to solemnize marriage, the Minister may register a person duly designated by the governing authority of the religious body who shall, in respect of marriages performed according to the rites, usages and customs of the religious body, perform all the duties imposed by this Act upon a person solemnizing a marriage, other than solemnizing the marriage.
Idem	(5) Where a person registered under subsection 4 performs the duties imposed by subsection 4, every marriage solemnized according to the rites, usages and customs of the religious body is valid. R.S.O. 1970, c. 261, s. 22, <i>amended</i> .
Register	21. —(1) The Minister shall keep a register of the name of every person registered as a person authorized to solemnize marriage, the date of such registration, and such other particulars as he considers advisable.
Certificate of registration	(2) The Minister may issue a certificate of registration under this section in the prescribed form. R.S.O. 1970, c. 261, s. 23.
Cancellation of registration	22. —(1) Where it appears to the Minister that any person registered as authorized to solemnize marriage has ceased to possess the qualifications entitling him to be so registered, or for any other cause, the Minister may cancel such registration.
Notice of change	(2) Every religious body, members of which are registered under this Act, shall notify the Minister of the name of every such member so registered who has died or has ceased to reside in Ontario or has ceased to be associated with such religious body. R.S.O. 1970, c. 261, s. 24.
Publication of registration and cancellation	23. When a person is registered under this Act as authorized to solemnize marriage, and when any such registration is cancelled, the Minister shall publish notice thereof in <i>The Ontario Gazette</i> . R.S.O. 1970, c. 261, s. 25.
Civil marriage	24. —(1) A judge, a justice of the peace or any other person of a class designated by the regulations may solemnize marriages under the authority of a licence.
Time and place	(2) The solemnization of a marriage by a judge shall take place in the judge's office and shall be performed between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.
Form of ceremony	(3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person

solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (*or* husband),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by *The Marriage Act, 1977*, do hereby pronounce you AB and CD to be husband and wife.

R.S.O. 1970, c. 261, s. 26, *amended*.

25. Every marriage shall be solemnized in the presence of the parties and at least two witnesses who shall affix their names as witnesses to the entry in the register made under section 28. R.S.O. 1970, c. 261, s. 20. Attendance of parties and witnesses

26. No marriage shall be solemnized under the authority of publication of banns unless proof of publication by the person or persons publishing the banns has been deposited with the person solemnizing the marriage. R.S.O. 1970, c. 261, s. 17. Proof of publication

27.—(1) A marriage shall not be solemnized under the authority of a licence earlier than the third day after the date of the issue of the licence, but the Minister in his absolute discretion may authorize the solemnization of the marriage earlier than such third day. R.S.O. 1970, c. 261, s. 14, *amended*. Waiting period: under licence

(2) A marriage shall not be solemnized under the authority of publication of banns, earlier than the fifth day after the date of the publication of banns. R.S.O. 1970, c. 261, s. 16, *amended*. Idem: under banns

(3) A marriage shall be solemnized only within the three months immediately following the issue of the licence or the publication of banns, as the case may be. R.S.O. 1970, c. 261, s. 19, *amended*. Time within which marriage to be solemnized

28.—(1) Every person shall immediately after he has solemnized a marriage, Entry in marriage register

(a) where the marriage was solemnized in a church, enter in the church register kept for the purpose; or

- (b) where the marriage was solemnized elsewhere than in the church, enter in a register kept by him for the purpose,

the particulars prescribed by the regulations, and the entry shall be authenticated by his signature and those of the parties and witnesses. R.S.O. 1970, c. 261, s. 27, *amended*.

Marriage
certificate

(2) Every person who solemnizes a marriage shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage specifying the names of the parties, the date of the marriage, the names of the witnesses, and whether the marriage was solemnized under the authority of a licence or publication of banns. R.S.O. 1970, c. 261, s. 21, *amended*.

Supply of
marriage
registers

29.—(1) Every person or religious body authorized to solemnize marriages may apply to the Minister for a marriage register, and the Minister shall thereupon supply the register.

Property of
Crown

(2) Every register supplied by the Minister is the property of the Crown. R.S.O. 1970, c. 261, s. 28, *amended*.

Protection
of persons
solemnizing
marriage in
good faith

30. No person who solemnizes or purports to solemnize a marriage is subject to any action or liability by reason of there having been any legal impediment to the marriage unless, at the time he performed the ceremony, he was aware of the impediment. R.S.O. 1970, c. 261, s. 44.

Marriages
solemnized
in good
faith

31. If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as man and wife, such marriage shall be deemed a valid marriage, notwithstanding that the person who solemnized the marriage was not authorized to solemnize marriage, and notwithstanding the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence. R.S.O. 1970, c. 261, s. 46.

Breach of
promise of
marriage
abolished

32.—(1) No action shall be brought for a breach of a promise to marry or for any damages resulting therefrom.

Application
of subs. 1

(2) Subsection 1 does not apply in respect of actions for breach of promise to marry or damages resulting therefrom commenced before the day on which this Act comes into force. *New*.

Recovery of
gifts made in
contempla-
tion of
marriage

33. Where one person makes a gift to another in contemplation of or conditional upon their marriage to each

other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift. *New.*

34. The Lieutenant Governor in Council may make regu- ^{Regulations}lations,

- (a) prescribing forms for the purposes of this Act and providing for their use, and requiring any matter therein to be verified by affidavit;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) requiring the payment of fees in respect of any matter required or authorized to be done under this Act, and providing for the retention of fees or any portion thereof by issuers and persons solemnizing marriages or any class of them and for the commutation of such fees;
- (d) prescribing the duties of issuers;
- (e) requiring persons authorized to solemnize marriages to furnish such information and returns as are prescribed;
- (f) amending Form 1 to make it conform to the law for the time being;
- (g) designating classes of persons authorized to solemnize marriages under section 24. *New.*

35.—(1) Every person who knowingly makes any false ^{Penalty: false statements} statement in any document required under this Act, in addition to any other penalty or punishment to which he may be liable, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes any provision of this ^{Idem: general} Act for which no other penalty is provided is guilty of an offence and on summary conviction is liable to a fine of not more than \$500. R.S.O. 1970, c. 261, ss. 47-52, *amended*.

36. The following are repealed:

^{Repeals}

1. *The Marriage Act*, being chapter 261 of the Revised Statutes of Ontario, 1970.

2. *The Marriage Amendment Act, 1972*, being chapter 32.

3. Section 55 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.

4. Section 44 of *The Government Reorganization Act, 1972*, being chapter 1.

Commence-
ment

37. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

38. The short title of this Act is *The Marriage Act, 1977*.

FORM 1

(Section 19)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
5. Wife's aunt
6. Mother
7. Step mother
8. Wife's mother
9. Daughter
10. Wife's daughter
11. Son's wife
12. Sister
13. Granddaughter
14. Grandson's wife
15. Wife's granddaughter
16. Niece
17. Nephew's wife

A woman may not marry her

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Husband's uncle
6. Father
7. Step father
8. Husband's father
9. Son
10. Husband's son
11. Daughter's husband
12. Brother
13. Grandson
14. Granddaughter's husband
15. Husband's grandson
16. Nephew
17. Niece's husband

The relationships set forth in this table include all such relationships, whether by the whole or half blood.

R.S.O. 1970, c. 261, Form 10, *amended*.

An Act to revise The Marriage Act

1st Reading

October 17th, 1977

2nd Reading

3rd Reading

THE HON. R. MCMURTRY
Attorney General

(Government Bill)

A2 80
B
B 56

BILL 62

Government Bill

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

An Act to revise The Marriage Act

THE HON. R. MCMURTRY
Attorney General

(Reprinted as amended by the Committee of the Whole House)



TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill revises *The Marriage Act* for the purpose of implementing some of the recommendations of the Ontario Law Reform Commission made in Part II of its Report on Family Law (Marriage) and also to implement certain administrative improvements.

The principal changes are:

1. The Act only applies to the first marriage ceremony and permits additional ceremonies by the same couple. (s. 1 (2)).
2. The requirement of fifteen days residence is deleted.
3. The minimum age for marriage is 18 years or 16 years with consent of the parents. (s. 5).
4. The duty of performing civil marriages now performed by provincial judges and county and district court judges is extended to justices of the peace and other designated persons. (s. 24).
5. The action for breach of promise of marriage is abolished. (s. 32)
6. The question of fault is removed from consideration of the question of entitlement to gifts made in contemplation of or conditional upon marriage. (s. 33)
7. The procedural forms and prescribing of fees are moved from the Act to be provided by regulations.

BILL 62

1977

An Act to revise The Marriage Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “band” means a band as defined in the *Indian Act* (Canada); R.S.C. 1970,
c. I-6
- (b) “church” includes chapel, meeting-house or place set aside for religious worship;
- (c) “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);
- (d) “issuer” means a person authorized under this Act to issue marriage licences;
- (e) “judge” means a provincial judge or a judge of a county or district court;
- (f) “licence” means a marriage licence issued under this Act;
- (g) “Minister” means the Minister of Consumer and Commercial Relations;
- (h) “prescribed” means prescribed by the regulations;
- (i) “regulations” means the regulations made under this Act;
- (j) “reserve” means a reserve as defined in the *Indian Act* (Canada). R.S.O. 1970, c. 261, s. 1; 1972, c. 1, s. 44 (1-3), *amended*.

Application
of Act to
subsequent
ceremonies

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized in accordance with this Act or recognized as valid in Ontario.
New.

Administra-
tion

2. The administration of this Act is under the direction of the Minister.

Delegation
of powers
and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial Relations, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1972, c. 1, s. 44 (3), *amended*.

Authority
to marry

4. No marriage may be solemnized except under the authority of a licence issued in accordance with this Act or the publication of banns. R.S.O. 1970, c. 261, s. 4 (1), *amended*.

Who may
marry

5.—(1) Any person who is of the age of majority may obtain a licence or be married under authority of publication of banns, provided no lawful cause exists to hinder the solemnization. R.S.O. 1970, c. 261, s. 5 (1), *amended*.

Idem

(2) No person shall issue a licence to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

Giving of
consent

(3) The consent referred to in subsection 2 is not required in respect of a person who is a widow, widower or divorced.

Idem

(4) Where one of the parents of a minor is dead or both parents are living apart, the consent required by subsection 2 may be given by the parent having actual or legal custody of the minor.

Idem

1974, c. 2

(5) Where both parents of a minor are dead or are voluntary or involuntary patients in a psychiatric facility, or are residents of a facility under *The Developmental Services Act, 1974*, the consent required by subsection 2 may be given by a lawfully appointed guardian or an acknowledged guardian who has brought up or who for the three years immediately preceding the intended marriage has supported the minor.

(6) Where a minor is made a ward of someone other than ^{Idem} a parent by order of a court or under any Act, the consent required by subsection 2 may be given by the lawful guardian of the minor or person responsible for exercising the rights and duties of a guardian of the minor. R.S.O. 1970, c. 261, ss. 7, 8, *amended*.

6.—(1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily withholds his consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a next friend for an order dispensing with the consent. ^{Application to dispense with consent}

(2) The judge shall hear the application in a summary ^{Powers of judge} manner and may, in his discretion, make an order dispensing with the consent required by section 5. R.S.O. 1970, c. 261, s. 9, *amended*.

7. No person shall issue a licence to or solemnize the marriage of any person whom he knows or has reasonable grounds to believe lacks capacity to marry by reason of being mentally ill or mentally defective or under the influence of intoxicating liquor or drugs. ^{Persons mentally ill or under influence} R.S.O. 1970, c. 261, s. 6, *amended*.

8.—(1) An applicant for a licence who has been previously married is entitled to be issued a licence if such marriage has been dissolved or annulled and such dissolution or annulment is recognized under the law of Ontario and the applicant otherwise complies with the requirements of this Act. ^{Where dissolution of former marriage recognized in Ontario}

(2) Subject to subsection 6, no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled in Canada unless such person deposits with the issuer, ^{Material to be filed with issuer where dissolution in Canada}

(a) the final decree or judgment dissolving or annulling the marriage or a copy of the final decree or judgment or Act dissolving or annulling the marriage, certified by the proper officer; and

(b) such other material as the issuer may require.

(3) Subject to subsection 6, no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada, unless the authorization in writing of the Minister is obtained upon the deposit of such material as he may require. ^{Where dissolution, etc., outside Canada}

- Review of refusal to issue licence
1971, c. 48
- (4) Where an issuer refuses to issue a licence, or the Minister refuses to issue an authorization under subsection 3, the applicant may apply to the Supreme Court for judicial review under *The Judicial Review Procedure Act, 1971* and for an order directing that a licence be issued to him and if the court finds that he is so entitled it may make such an order.
- Parties
- (5) The applicant, the Minister and such other persons as the court may order are parties to an application under subsection 4.
- Issue of licence under court order
- (6) Where an applicant for a licence files with an issuer, together with his application, an order of the Supreme Court made on an application under subsection 4 directing that a licence be issued to him, the issuer shall issue the licence. 1971, c. 50, s. 55 (1).
- Application for presumption of death
- 9.—**(1) A married person whose spouse is missing and who alleges,
- (a) that his spouse has been continuously absent for at least seven years immediately preceding the application;
 - (b) that his spouse has not been heard from or heard of during such period by the applicant or to the knowledge of the applicant by any other person; and
 - (c) that the applicant has made reasonable inquiries and has no reason to believe that his spouse is living,
- may apply to the judge of a county or district court for an order under this section.
- Order
- (2) Upon being satisfied as to the truth of the matters alleged, the judge may, in his discretion, make an order declaring that the spouse shall be presumed dead. R.S.O. 1970, c. 261, s. 11 (1, 2).
- Remarriage authorized
- (3) Where an order has been obtained under this section, the person in whose favour the order was made may, subject to the provisions of this Act, obtain a licence or be married under the authority of publication of banns upon depositing a copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the prescribed form.

(4) The order has no effect for any purpose other than the issuance of a licence under subsection 3. R.S.O. 1970, c. 261, s. 11 (3, 4), *amended*. Effect of order

10. Notwithstanding anything in this Act, if the Minister considers that circumstances justify the issue of a licence in any particular case, he may, in his absolute discretion, authorize the issue of the licence. R.S.O. 1970, c. 261, s. 10, *amended*. Discretionary power of Minister

11.—(1) Marriage licences may be issued by the clerk of every city, town and village. Issuers

(2) Where it is considered expedient for the public convenience, the Lieutenant Governor in Council may appoint as an issuer the clerk of any township, or any person resident in a county, or in a township adjacent thereto, or in a provisional judicial district, or a member of a band upon the recommendation of the council of the band. R.S.O. 1970, c. 261, s. 30, *amended*. In townships and unorganized territory

(3) An issuer may, with the approval in writing of the Minister or of the head of the council of the municipality of which he is clerk, appoint in writing one or more deputies to act for him, and any such deputy while so acting has the power of the issuer appointing him. Deputy issuers

(4) The issuer shall, upon appointing a deputy, forthwith transmit to the Minister a notice of the appointment, and of the name and official position of the person by whom the appointment has been approved, and the Minister may at any time cancel the appointment. Notice of appointment of deputy

(5) The deputy shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner: Signature of licences by deputy

AB, Issuer of Marriage Licences, per CD, Deputy Issuer.

R.S.O. 1970, c. 261, s. 31.

12.—(1) An issuer or the Minister may require evidence to identify any applicant or to establish his status and may examine, under oath if required, any applicant or other person as to any matter pertaining to the issue of a licence. R.S.O. 1970, c. 261, s. 33, *amended*. Evidence on applications

(2) Where an issuer has reason to believe that any information set out in an application for a licence is untrue, he shall not issue the licence unless, on the production of such further evidence as he may require, he is satisfied as to the truth of the information. R.S.O. 1970, c. 261, s. 35, *amended*. Untrue information

Record of
licences

13.—(1) Every issuer shall keep in his office a record of the serial number and the date of issue of every licence issued by him, and the names and addresses of the parties to the intended marriage.

Searches

(2) Any person is entitled, upon application, to have a search made respecting any licence issued within three months immediately preceding the date of application. R.S.O. 1970, c. 261, s. 34.

Material to be
forwarded to
Registrar
General

14. Every issuer immediately upon issuing a licence and every person registered as authorized to solemnize marriage upon publishing banns shall forward to the Registrar General,

(a) any consent under section 5;

(b) any judge's order under section 6;

(c) any affidavit or judge's order under section 9;

(d) any documentary or other material filed on the application for a licence under section 8;

(e) any affidavit as to age;

(f) any documentary material obtained under section 12. R.S.O. 1970, c. 261, s. 36, *amended*.

Oaths

15. Issuers may administer oaths for the purposes of this Act. R.S.O. 1970, c. 261, s. 37.

Indians

16. Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario no fee shall be charged for the licence. R.S.O. 1970, c. 261, s. 39, *amended*.

Publication
of banns

17.—(1) Where a marriage is to be solemnized under the authority of publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

(a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or

(b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

Method and
time of
publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(3) Where the usage of any denomination, faith or creed ^{Exception} substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(4) The person or persons who publish banns shall certify ^{Proof} proof thereof in the prescribed form. R.S.O. 1970, c. 261, s. 15, *amended*.

18. Banns shall not be published where either of the ^{Where banns not to be published} parties to the intended marriage has been married and the marriage has been dissolved or annulled. R.S.O. 1970, c. 261, s. 18, *amended*.

19. Form 1 respecting the prohibited degrees of affinity ^{Prohibited degrees to be endorsed} and consanguinity shall be endorsed on the licence and on the proof of publication of banns. R.S.O. 1970, c. 261, s. 45 (1), *amended*.

20.—(1) No person shall solemnize a marriage unless he ^{Who may solemnize marriage} is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage.

(2) Upon application the Minister may, subject to subsec- ^{Application for registration} tion 3, register any person as a person authorized to solemnize marriage.

(3) No person shall be registered unless it appears to the ^{Who may be registered} Minister,

- (a) that the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs, or is, by the rules of that religious body, deemed ordained or appointed;
- (b) that the person is duly recognized by the religious body to which he belongs as entitled to solemnize marriage according to its rites and usages;
- (c) that the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and
- (d) that the person is resident in Ontario or has his parish or pastoral charge in whole or in part in Ontario; provided that in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register him as authorized to solemnize marriage during a period to be fixed by the Minister.

Where no
person
authorized to
solemnize
marriage

(4) Notwithstanding subsection 1, where it appears to the Minister that the doctrines of a religious body described in clause *c* of subsection 3 do not recognize any person as authorized to solemnize marriage, the Minister may register a person duly designated by the governing authority of the religious body who shall, in respect of marriages performed according to the rites, usages and customs of the religious body, perform all the duties imposed by this Act upon a person solemnizing a marriage, other than solemnizing the marriage.

Idem

(5) Where a person registered under subsection 4 performs the duties imposed by subsection 4, every marriage solemnized according to the rites, usages and customs of the religious body is valid. R.S.O. 1970, c. 261, s. 22, *amended*.

Register

21.—(1) The Minister shall keep a register of the name of every person registered as a person authorized to solemnize marriage, the date of such registration, and such other particulars as he considers advisable.

Certificate
of
registration

(2) The Minister may issue a certificate of registration under this section in the prescribed form. R.S.O. 1970, c. 261, s. 23.

Cancellation
of
registration

22.—(1) Where it appears to the Minister that any person registered as authorized to solemnize marriage has ceased to possess the qualifications entitling him to be so registered, or for any other cause, the Minister may cancel such registration.

Notice of
change

(2) Every religious body, members of which are registered under this Act, shall notify the Minister of the name of every such member so registered who has died or has ceased to reside in Ontario or has ceased to be associated with such religious body. R.S.O. 1970, c. 261, s. 24.

Publication
of
registration
and
cancellation

23. When a person is registered under this Act as authorized to solemnize marriage, and when any such registration is cancelled, the Minister shall publish notice thereof in *The Ontario Gazette*. R.S.O. 1970, c. 261, s. 25.

Civil
marriage

24.—(1) A judge, a justice of the peace or any other person of a class designated by the regulations may solemnize marriages under the authority of a licence.

Time and
place

(2) The solemnization of a marriage by a judge shall take place in the judge's office and shall be performed between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.

Form of
ceremony

(3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person

solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (*or* husband),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by *The Marriage Act, 1977*, do hereby pronounce you AB and CD to be husband and wife.

R.S.O. 1970, c. 261, s. 26, *amended*.

25. Every marriage shall be solemnized in the presence of the parties and at least two witnesses who shall affix their names as witnesses to the entry in the register made under section 28. R.S.O. 1970, c. 261, s. 20. Attendance of parties and witnesses

26. No marriage shall be solemnized under the authority of publication of banns unless proof of publication by the person or persons publishing the banns has been deposited with the person solemnizing the marriage. R.S.O. 1970, c. 261, s. 17. Proof of publication

27.—(1) A marriage shall not be solemnized under the authority of a licence earlier than the third day after the date of the issue of the licence, but the Minister in his absolute discretion may authorize the solemnization of the marriage earlier than such third day. R.S.O. 1970, c. 261, s. 14, *amended*. Waiting period; under licence

(2) A marriage shall not be solemnized under the authority of publication of banns, earlier than the fifth day after the date of the publication of banns. R.S.O. 1970, c. 261, s. 16, *amended*. Idem: under banns

(3) A marriage shall be solemnized only within the three months immediately following the issue of the licence or the publication of banns, as the case may be. R.S.O. 1970, c. 261, s. 19, *amended*. Time within which marriage to be solemnized

28.—(1) Every person shall immediately after he has solemnized a marriage, Entry in marriage register

(a) where the marriage was solemnized in a church, enter in the church register kept for the purpose; or

- (b) where the marriage was solemnized elsewhere than in the church, enter in a register kept by him for the purpose,

the particulars prescribed by the regulations, and the entry shall be authenticated by his signature and those of the parties and witnesses. R.S.O. 1970, c. 261, s. 27, *amended*.

Marriage
certificate

(2) Every person who solemnizes a marriage shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage specifying the names of the parties, the date of the marriage, the names of the witnesses, and whether the marriage was solemnized under the authority of a licence or publication of banns. R.S.O. 1970, c. 261, s. 21, *amended*.

Supply of
marriage
registers

29.—(1) Every person or religious body authorized to solemnize marriages may apply to the Minister for a marriage register, and the Minister shall thereupon supply the register.

Property of
Crown

(2) Every register supplied by the Minister is the property of the Crown. R.S.O. 1970, c. 261, s. 28, *amended*.

Protection
of persons
solemnizing
marriage in
good faith

30. No person who solemnizes or purports to solemnize a marriage is subject to any action or liability by reason of there having been any legal impediment to the marriage unless, at the time he performed the ceremony, he was aware of the impediment. R.S.O. 1970, c. 261, s. 44.

Marriages
solemnized
in good
faith

31. If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as man and wife, such marriage shall be deemed a valid marriage, notwithstanding that the person who solemnized the marriage was not authorized to solemnize marriage, and notwithstanding the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence. R.S.O. 1970, c. 261, s. 46.

Breach of
promise of
marriage
abolished

32.—(1) No action shall be brought for a breach of a promise to marry or for any damages resulting therefrom.

Application
of subs. 1

(2) Subsection 1 does not apply in respect of actions for breach of promise to marry or damages resulting therefrom commenced before the day on which this Act comes into force. *New*.

Recovery of
gifts made in
contempla-
tion of
marriage

33. Where one person makes a gift to another in contemplation of or conditional upon their marriage to each

other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift. *New.*

34. The Lieutenant Governor in Council may make regu- Regulations
lations,

- (a) prescribing forms for the purposes of this Act and providing for their use, and requiring any matter therein to be verified by affidavit;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) requiring the payment of fees in respect of any matter required or authorized to be done under this Act, and providing for the retention of fees or any portion thereof by issuers and persons solemnizing marriages or any class of them and for the commutation of such fees;
- (d) prescribing the duties of issuers;
- (e) requiring persons authorized to solemnize marriages to furnish such information and returns as are prescribed;
- (f) amending Form 1 to make it conform to the law for the time being;
- (g) designating classes of persons authorized to solemnize marriages under section 24. *New.*

35.—(1) Every person who knowingly makes any false ^{Penalty: false statements} statement in any document required under this Act, in addition to any other penalty or punishment to which he may be liable, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes any provision of this ^{Idem: general} Act for which no other penalty is provided is guilty of an offence and on summary conviction is liable to a fine of not more than \$500. R.S.O. 1970, c. 261, ss. 47-52, *amended*.

36. The following are repealed:

Repeals

1. *The Marriage Act*, being chapter 261 of the Revised Statutes of Ontario, 1970.

2. *The Marriage Amendment Act, 1972*, being chapter 32.

3. Section 55 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.

4. Section 44 of *The Government Reorganization Act, 1972*, being chapter 1.

Commence-
ment

37. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

38. The short title of this Act is *The Marriage Act, 1977*.

FORM 1

(Section 19)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
5. Wife's aunt
6. Mother
7. Step mother
8. Wife's mother
9. Daughter
10. Wife's daughter
11. Son's wife
12. Sister
13. Granddaughter
14. Grandson's wife
15. Wife's granddaughter
16. Niece
17. Nephew's wife

A woman may not marry her

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Husband's uncle
6. Father
7. Step father
8. Husband's father
9. Son
10. Husband's son
11. Daughter's husband
12. Brother
13. Grandson
14. Granddaughter's husband
15. Husband's grandson
16. Nephew
17. Niece's husband

The relationships set forth in this table include all such relationships, whether by the whole or half blood.

R.S.O. 1970, c. 261, Form 10, *amended*.

An Act to revise The Marriage Act

1st Reading

October 17th, 1977

2nd Reading

October 18th, 1977

3rd Reading

THE HON. R. MCMURTRY
Attorney General

*(Reprinted as amended by the
Committee of the Whole House)*

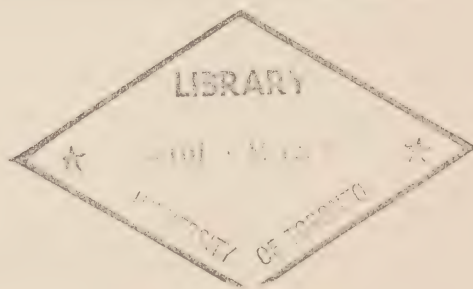
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BILL 62

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

An Act to revise The Marriage Act

THE HON. R. MCMURTRY
Attorney General



TORONTO

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BILL 62

1977

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “band” means a band as defined in the *Indian Act* (Canada); R.S.C. 1970,
c. I-6
- (b) “church” includes chapel, meeting-house or place set aside for religious worship;
- (c) “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);
- (d) “issuer” means a person authorized under this Act to issue marriage licences;
- (e) “judge” means a provincial judge or a judge of a county or district court;
- (f) “licence” means a marriage licence issued under this Act;
- (g) “Minister” means the Minister of Consumer and Commercial Relations;
- (h) “prescribed” means prescribed by the regulations;
- (i) “regulations” means the regulations made under this Act;
- (j) “reserve” means a reserve as defined in the *Indian Act* (Canada). R.S.O. 1970, c. 261, s. 1; 1972, c. 1, s. 44 (1-3), *amended*.

Application
of Act to
subsequent
ceremonies

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized in accordance with this Act or recognized as valid in Ontario.
New.

Administra-
tion

2. The administration of this Act is under the direction of the Minister.

Delegation
of powers
and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial Relations, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1972, c. 1, s. 44 (3), *amended*.

Authority
to marry

4. No marriage may be solemnized except under the authority of a licence issued in accordance with this Act or the publication of banns. R.S.O. 1970, c. 261, s. 4 (1), *amended*.

Who may
marry

5.—(1) Any person who is of the age of majority may obtain a licence or be married under authority of publication of banns, provided no lawful cause exists to hinder the solemnization. R.S.O. 1970, c. 261, s. 5 (1), *amended*.

Idem

(2) No person shall issue a licence to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

Giving of
consent

(3) The consent referred to in subsection 2 is not required in respect of a person who is a widow, widower or divorced.

Idem

(4) Where one of the parents of a minor is dead or both parents are living apart, the consent required by subsection 2 may be given by the parent having actual or legal custody of the minor.

Idem

1974, c. 2

(5) Where both parents of a minor are dead or are voluntary or involuntary patients in a psychiatric facility, or are residents of a facility under *The Developmental Services Act, 1974*, the consent required by subsection 2 may be given by a lawfully appointed guardian or an acknowledged guardian who has brought up or who for the three years immediately preceding the intended marriage has supported the minor.

(6) Where a minor is made a ward of someone other than ^{Idem} a parent by order of a court or under any Act, the consent required by subsection 2 may be given by the lawful guardian of the minor or person responsible for exercising the rights and duties of a guardian of the minor. R.S.O. 1970, c. 261, ss. 7, 8, *amended*.

6.—(1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily withholds his consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a next friend for an order dispensing with the consent. ^{Application to dispense with consent}

(2) The judge shall hear the application in a summary ^{Powers of judge} manner and may, in his discretion, make an order dispensing with the consent required by section 5. R.S.O. 1970, c. 261, s. 9, *amended*.

7. No person shall issue a licence to or solemnize the marriage of any person whom he knows or has reasonable grounds to believe lacks capacity to marry by reason of being mentally ill or mentally defective or under the influence of intoxicating liquor or drugs. ^{Persons mentally ill or under influence} R.S.O. 1970, c. 261, s. 6, *amended*.

8.—(1) An applicant for a licence who has been previously married is entitled to be issued a licence if such marriage has been dissolved or annulled and such dissolution or annulment is recognized under the law of Ontario and the applicant ^{Where dissolution of former marriage recognized in Ontario} otherwise complies with the requirements of this Act.

(2) Subject to subsection 6, no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled in Canada unless such person deposits with the issuer, ^{Material to be filed with issuer where dissolution in Canada}

(a) the final decree or judgment dissolving or annulling the marriage or a copy of the final decree or judgment or Act dissolving or annulling the marriage, certified by the proper officer; and

(b) such other material as the issuer may require.

(3) Subject to subsection 6, no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada, unless the authorization in writing of the Minister is obtained upon the deposit of such material as he may require. ^{Where dissolution, etc., outside Canada}

Review of
refusal to
issue
licence

1971, c. 48

(4) Where an issuer refuses to issue a licence, or the Minister refuses to issue an authorization under subsection 3, the applicant may apply to the Supreme Court for judicial review under *The Judicial Review Procedure Act, 1971* and for an order directing that a licence be issued to him and if the court finds that he is so entitled it may make such an order.

Parties

(5) The applicant, the Minister and such other persons as the court may order are parties to an application under subsection 4.

Issue of
licence
under court
order

(6) Where an applicant for a licence files with an issuer, together with his application, an order of the Supreme Court made on an application under subsection 4 directing that a licence be issued to him, the issuer shall issue the licence. 1971, c. 50, s. 55 (1).

Application
for presump-
tion of death

9.—(1) A married person whose spouse is missing and who alleges,

- (a) that his spouse has been continuously absent for at least seven years immediately preceding the application;
- (b) that his spouse has not been heard from or heard of during such period by the applicant or to the knowledge of the applicant by any other person; and
- (c) that the applicant has made reasonable inquiries and has no reason to believe that his spouse is living,

may apply to the judge of a county or district court for an order under this section.

Order

(2) Upon being satisfied as to the truth of the matters alleged, the judge may, in his discretion, make an order declaring that the spouse shall be presumed dead. R.S.O. 1970, c. 261, s. 11 (1, 2).

Remarriage
authorized

(3) Where an order has been obtained under this section, the person in whose favour the order was made may, subject to the provisions of this Act, obtain a licence or be married under the authority of publication of banns upon depositing a copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the prescribed form.

(4) The order has no effect for any purpose other than the issuance of a licence under subsection 3. R.S.O. 1970, c. 261, s. 11 (3, 4), *amended*. Effect of order

10. Notwithstanding anything in this Act, if the Minister considers that circumstances justify the issue of a licence in any particular case, he may, in his absolute discretion, authorize the issue of the licence. R.S.O. 1970, c. 261, s. 10, *amended*. Discretionary power of Minister

11.—(1) Marriage licences may be issued by the clerk of every city, town and village. Issuers

(2) Where it is considered expedient for the public convenience, the Lieutenant Governor in Council may appoint as an issuer the clerk of any township, or any person resident in a county, or in a township adjacent thereto, or in a provisional judicial district, or a member of a band upon the recommendation of the council of the band. R.S.O. 1970, c. 261, s. 30, *amended*. In townships and unorganized territory

(3) An issuer may, with the approval in writing of the Minister or of the head of the council of the municipality of which he is clerk, appoint in writing one or more deputies to act for him, and any such deputy while so acting has the power of the issuer appointing him. Deputy issuers

(4) The issuer shall, upon appointing a deputy, forthwith transmit to the Minister a notice of the appointment, and of the name and official position of the person by whom the appointment has been approved, and the Minister may at any time cancel the appointment. Notice of appointment of deputy

(5) The deputy shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner: Signature of licences by deputy

AB, Issuer of Marriage Licences, per CD, Deputy Issuer.

R.S.O. 1970, c. 261, s. 31.

12.—(1) An issuer or the Minister may require evidence to identify any applicant or to establish his status and may examine, under oath if required, any applicant or other person as to any matter pertaining to the issue of a licence. R.S.O. 1970, c. 261, s. 33, *amended*. Evidence on applications

(2) Where an issuer has reason to believe that any information set out in an application for a licence is untrue, he shall not issue the licence unless, on the production of such further evidence as he may require, he is satisfied as to the truth of the information. R.S.O. 1970, c. 261, s. 35, *amended*. Untrue information

Record of
licences

13.—(1) Every issuer shall keep in his office a record of the serial number and the date of issue of every licence issued by him, and the names and addresses of the parties to the intended marriage.

Searches

(2) Any person is entitled, upon application, to have a search made respecting any licence issued within three months immediately preceding the date of application. R.S.O. 1970, c. 261, s. 34.

Material to be
forwarded to
Registrar
General

14. Every issuer immediately upon issuing a licence and every person registered as authorized to solemnize marriage upon publishing banns shall forward to the Registrar General,

(a) any consent under section 5;

(b) any judge's order under section 6;

(c) any affidavit or judge's order under section 9;

(d) any documentary or other material filed on the application for a licence under section 8;

(e) any affidavit as to age;

(f) any documentary material obtained under section 12. R.S.O. 1970, c. 261, s. 36, *amended*.

Oaths

15. Issuers may administer oaths for the purposes of this Act. R.S.O. 1970, c. 261, s. 37.

Indians

16. Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario no fee shall be charged for the licence. R.S.O. 1970, c. 261, s. 39, *amended*.

Publication
of banns

17.—(1) Where a marriage is to be solemnized under the authority of publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

(a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or

(b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

Method and
time of
publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(3) Where the usage of any denomination, faith or creed ^{Exception} substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(4) The person or persons who publish banns shall certify ^{Proof} proof thereof in the prescribed form. R.S.O. 1970, c. 261, s. 15, *amended*.

18. Banns shall not be published where either of the ^{Where banns not to be published} parties to the intended marriage has been married and the marriage has been dissolved or annulled. R.S.O. 1970, c. 261, s. 18, *amended*.

19. Form 1 respecting the prohibited degrees of affinity ^{Prohibited degrees to be endorsed} and consanguinity shall be endorsed on the licence and on the proof of publication of banns. R.S.O. 1970, c. 261, s. 45 (1), *amended*.

20.—(1) No person shall solemnize a marriage unless he ^{Who may solemnize marriage} is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage.

(2) Upon application the Minister may, subject to subsec- ^{Application for registration} tion 3, register any person as a person authorized to solemnize marriage.

(3) No person shall be registered unless it appears to the ^{Who may be registered} Minister,

- (a) that the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs, or is, by the rules of that religious body, deemed ordained or appointed;
- (b) that the person is duly recognized by the religious body to which he belongs as entitled to solemnize marriage according to its rites and usages;
- (c) that the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and
- (d) that the person is resident in Ontario or has his parish or pastoral charge in whole or in part in Ontario; provided that in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register him as authorized to solemnize marriage during a period to be fixed by the Minister.

Where no person authorized to solemnize marriage	(4) Notwithstanding subsection 1, where it appears to the Minister that the doctrines of a religious body described in clause <i>c</i> of subsection 3 do not recognize any person as authorized to solemnize marriage, the Minister may register a person duly designated by the governing authority of the religious body who shall, in respect of marriages performed according to the rites, usages and customs of the religious body, perform all the duties imposed by this Act upon a person solemnizing a marriage, other than solemnizing the marriage.
Idem	(5) Where a person registered under subsection 4 performs the duties imposed by subsection 4, every marriage solemnized according to the rites, usages and customs of the religious body is valid. R.S.O. 1970, c. 261, s. 22, <i>amended</i> .
Register	21. —(1) The Minister shall keep a register of the name of every person registered as a person authorized to solemnize marriage, the date of such registration, and such other particulars as he considers advisable.
Certificate of registration	(2) The Minister may issue a certificate of registration under this section in the prescribed form. R.S.O. 1970, c. 261, s. 23.
Cancellation of registration	22. —(1) Where it appears to the Minister that any person registered as authorized to solemnize marriage has ceased to possess the qualifications entitling him to be so registered, or for any other cause, the Minister may cancel such registration.
Notice of change	(2) Every religious body, members of which are registered under this Act, shall notify the Minister of the name of every such member so registered who has died or has ceased to reside in Ontario or has ceased to be associated with such religious body. R.S.O. 1970, c. 261, s. 24.
Publication of registration and cancellation	23. When a person is registered under this Act as authorized to solemnize marriage, and when any such registration is cancelled, the Minister shall publish notice thereof in <i>The Ontario Gazette</i> . R.S.O. 1970, c. 261, s. 25.
Civil marriage	24. —(1) A judge, a justice of the peace or any other person of a class designated by the regulations may solemnize marriages under the authority of a licence.
Time and place	(2) The solemnization of a marriage by a judge shall take place in the judge's office and shall be performed between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.
Form of ceremony	(3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person

solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (*or* husband),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by *The Marriage Act, 1977*, do hereby pronounce you AB and CD to be husband and wife.

R.S.O. 1970, c. 261, s. 26, *amended*.

25. Every marriage shall be solemnized in the presence of the parties and at least two witnesses who shall affix their names as witnesses to the entry in the register made under section 28. R.S.O. 1970, c. 261, s. 20.

26. No marriage shall be solemnized under the authority of publication of banns unless proof of publication by the person or persons publishing the banns has been deposited with the person solemnizing the marriage. R.S.O. 1970, c. 261, s. 17.

27.—(1) A marriage shall not be solemnized under the authority of a licence earlier than the third day after the date of the issue of the licence, but the Minister in his absolute discretion may authorize the solemnization of the marriage earlier than such third day. R.S.O. 1970, c. 261, s. 14, *amended*.

(2) A marriage shall not be solemnized under the authority of publication of banns, earlier than the fifth day after the date of the publication of banns. R.S.O. 1970, c. 261, s. 16, *amended*.

(3) A marriage shall be solemnized only within the three months immediately following the issue of the licence or the publication of banns, as the case may be. R.S.O. 1970, c. 261, s. 19, *amended*.

28.—(1) Every person shall immediately after he has solemnized a marriage,

(a) where the marriage was solemnized in a church, enter in the church register kept for the purpose; or

- (b) where the marriage was solemnized elsewhere than in the church, enter in a register kept by him for the purpose,

the particulars prescribed by the regulations, and the entry shall be authenticated by his signature and those of the parties and witnesses. R.S.O. 1970, c. 261, s. 27, *amended*.

Marriage
certificate

(2) Every person who solemnizes a marriage shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage specifying the names of the parties, the date of the marriage, the names of the witnesses, and whether the marriage was solemnized under the authority of a licence or publication of banns. R.S.O. 1970, c. 261, s. 21, *amended*.

Supply of
marriage
registers

29.—(1) Every person or religious body authorized to solemnize marriages may apply to the Minister for a marriage register, and the Minister shall thereupon supply the register.

Property of
Crown

(2) Every register supplied by the Minister is the property of the Crown. R.S.O. 1970, c. 261, s. 28, *amended*.

Protection
of persons
solemnizing
marriage in
good faith

30. No person who solemnizes or purports to solemnize a marriage is subject to any action or liability by reason of there having been any legal impediment to the marriage unless, at the time he performed the ceremony, he was aware of the impediment. R.S.O. 1970, c. 261, s. 44.

Marriages
solemnized
in good
faith

31. If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as man and wife, such marriage shall be deemed a valid marriage, notwithstanding that the person who solemnized the marriage was not authorized to solemnize marriage, and notwithstanding the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence. R.S.O. 1970, c. 261, s. 46.

Breach of
promise of
marriage
abolished

32.—(1) No action shall be brought for a breach of a promise to marry or for any damages resulting therefrom.

Application
of subs. 1

(2) Subsection 1 does not apply in respect of actions for breach of promise to marry or damages resulting therefrom commenced before the day on which this Act comes into force. *New*.

Recovery of
gifts made in
contempla-
tion of
marriage

33. Where one person makes a gift to another in contemplation of or conditional upon their marriage to each

other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift. *New.*

34. The Lieutenant Governor in Council may make regu- Regulations
lations,

- (a) prescribing forms for the purposes of this Act and providing for their use, and requiring any matter therein to be verified by affidavit;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) requiring the payment of fees in respect of any matter required or authorized to be done under this Act, and providing for the retention of fees or any portion thereof by issuers and persons solemnizing marriages or any class of them and for the commutation of such fees;
- (d) prescribing the duties of issuers;
- (e) requiring persons authorized to solemnize marriages to furnish such information and returns as are prescribed;
- (f) amending Form 1 to make it conform to the law for the time being;
- (g) designating classes of persons authorized to solemnize marriages under section 24. *New.*

35.—(1) Every person who knowingly makes any false Penalty: false statements
statement in any document required under this Act, in addition to any other penalty or punishment to which he may be liable, is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes any provision of this Idem: general
Act for which no other penalty is provided is guilty of an offence and on summary conviction is liable to a fine of not more than \$500. R.S.O. 1970, c. 261, ss. 47-52, *amended*.

36. The following are repealed:

Repeals

1. *The Marriage Act*, being chapter 261 of the Revised Statutes of Ontario, 1970.

- 2. *The Marriage Amendment Act, 1972*, being chapter 32.
- 3. Section 55 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.
- 4. Section 44 of *The Government Reorganization Act, 1972*, being chapter 1.

Commence-
ment

37. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

38. The short title of this Act is *The Marriage Act, 1977*.

FORM 1

(Section 19)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his	A woman may not marry her
1. Grandmother	1. Grandfather
2. Grandfather's wife	2. Grandmother's husband
3. Wife's grandmother	3. Husband's grandfather
4. Aunt	4. Uncle
5. Wife's aunt	5. Husband's uncle
6. Mother	6. Father
7. Step mother	7. Step father
8. Wife's mother	8. Husband's father
9. Daughter	9. Son
10. Wife's daughter	10. Husband's son
11. Son's wife	11. Daughter's husband
12. Sister	12. Brother
13. Granddaughter	13. Grandson
14. Grandson's wife	14. Granddaughter's husband
15. Wife's granddaughter	15. Husband's grandson
16. Niece	16. Nephew
17. Nephew's wife	17. Niece's husband

The relationships set forth in this table include all such relationships, whether by the whole or half blood.

R.S.O. 1970, c. 261, Form 10, *amended*.

BILL 62

An Act to revise The Marriage Act

1st Reading

October 17th, 1977

2nd Reading

October 18th, 1977

3rd Reading

November 1st, 1977

THE HON. R. MCMURTRY
Attorney General

1ST SESSION, 31ST LEGISLATURE, ONTARIO
26 ELIZABETH II, 1977

**An Act respecting
Motor Vehicle Access to Property by Private Road**

MR. MAECK

TORONTO

PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

EXPLANATORY NOTE

The Bill is designed to protect the interests of a person who is dependent upon a single private road for motor vehicle access to his property. A person who wishes to close a private road may do so upon obtaining a court order or by meeting one of the other exceptions set out in the Bill. The Bill does not affect rights of ownership in land but contemplates that in the case of a dispute concerning property rights, the road will remain open until the rights of the parties are determined unless circumstances arise that justify the making of a closing order.

BILL 63

1977

An Act respecting Motor Vehicle Access to Property by Private Road

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) “judge” means a judge of a county or district court;
- (b) “private road” means a road, not dedicated or deemed at law to be a public highway, that is ordinarily used as a motor vehicle thoroughfare.

2.—(1) No person shall construct or place a barrier or other obstacle over a private road that, as a result, prevents road access to one or more parcels of land unless, Private road
may not be
closed

- (a) the person has obtained a court order referred to in section 3;
- (b) the closure is made with the consent of the persons immediately affected thereby;
- (c) the closure is of a temporary nature for the purposes of repair or maintenance of the road; or
- (d) the closure is in accordance with a final determination of the rights of the parties made by a court of law or arising from the settlement of an action.

(2) For the purposes of this Act, a person immediately affected by a road closure is an owner, tenant or other occupant of land served by a private road who would be deprived of motor vehicle access to the land if the road were closed. Idem

3.—(1) An application for an order closing a private road may be made to a judge in the county or district in which Closing
order

the proposed place of closure is located and the application shall include a description of the private road sought to be closed, the proposed place of closure, and the names of owners and tenants immediately affected thereby.

Notice

(2) At least ten days notice of an application for a closing order shall be given to owners and tenants of land immediately affected by the proposed closure and the notice shall be served personally or sent by registered mail to the person's permanent residence.

When judge
may grant
order

(3) A judge may grant a closing order upon being satisfied that the closure of the private road is reasonably necessary to prevent irreparable damage or injury to the interests of the applicant or is reasonably necessary for some purpose in the public interest.

Interim
closing
order

(4) Where notice as required under subsection 2 is not given, the court may grant an interim closing order for a period not longer than thirty days upon being satisfied that the delay required to give notice would result in irreparable damage or injury to the interests of the applicant.

Idem

(5) A judge may make a closing order or interim closing order on such terms and conditions and subject to section 4, for such duration as the judge deems proper in the circumstances.

Setting
aside
order

(6) An owner or tenant entitled to notice at the time a closing order is made may apply to a judge to have the order set aside and the judge may so order where he deems it proper in the circumstances.

Saving

4. Nothing in this Act shall be construed to confer any right in respect of the ownership of land where the right does not otherwise exist at law.

Offence

5. Every person who knowingly contravenes section 2 of this Act is guilty of an offence and on summary conviction is liable to pay a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Commence-
ment

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is *The Private Road Access Act, 1977*.

An Act respecting Motor Vehicle Access
to Property by Private Road

1st Reading

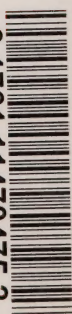
October 17th, 1977

2nd Reading

3rd Reading

MR. MAECK

(Private Member's Bill)



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